BEFORE THE ARBITRATOR

In the Matter of the Petition of

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1801 CUDAHY

To Initiate Arbitration Between
Said Petitioner and

CITY OF CUDAHY (FIRE DEPARTMENT)

Case 92
No. 60108 MIA-2406
Decision No. 30434-A

Appearances:
The Law Office of John B. Kiel, LLC., Attorney at Law, by Mr. John B. Kiel, 3300 252nd Avenue, Salem, Wisconsin 53168, on behalf of the Union.
Michael, Best & Friedrich, Attorneys at Law, by Mr. Robert W. Mulcahy, 100 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, on behalf of the Employer.

ARBITRATION AWARD

International Association of Fire Fighters, Local 1801 Cudahy, hereinafter referred to as the Association or the Union, and City of Cudahy (Fire Department), hereinafter referred to as the City or Employer, met on several occasions in collective bargaining in an effort to reach an accord on the terms of a new collective bargaining agreement to succeed an agreement, which by its terms was to expire on December 31, 2000. Said agreement covered all non-supervisory fire fighter personnel employed by the City of Cudahy (Fire Department) and represented by IAFF Local 1801. Failing to reach such an accord, the Union, on July 5, 2001, filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting the latter agency to initiate arbitration, pursuant to Section 111.77(3) of the Municipal Employment Relations Act,

and following an investigation conducted in the matter, the WERC, after receiving the final offers from the parties on July 31, 2002, issued an Order, dated August 6, 2002, wherein it determined that the parties were at an impasse in their bargaining, and wherein the WERC certified that the conditions for the initiation of arbitration had been met, and further wherein the WERC ordered that the parties proceed to final and binding arbitration to resolve the impasse existing between them. In said regard the WERC submitted a panel of five arbitrators from which the parties were directed to select a single arbitrator. After being advised by the parties of their selection, the WERC, on August 27, 2002, issued an Order appointing the undersigned as the Arbitrator to resolve the impasse between the parties, and to issue a final and binding award, by selecting either of the total final offers proffered by the parties to the WERC during the course of its investigation.

Pursuant to arrangements previously agreed upon, the undersigned conducted a hearing in the matter on November 21, 2001, at Cudahy, Wisconsin, during the course of which the parties were afforded the opportunity to present evidence and argument. The hearing was transcribed. Initial and reply briefs were filed and exchanged, and received by February 15, 2003. The record was closed as of the latter date.

THE FINAL OFFERS AND STIPULATIONS OF THE PARTIES:

The Employer and Union final offers and Tentative Agreements are attached and identified as attachment "A," "B" and "C," respectively.

BACKGROUND:

The City of Cudahy has the following bargaining units in addition to the fire fighter unit herein: (1) AFSCME Local 742 representing Department of Public Works employees, clerks

and dispatchers, (2) AFSCME Local 742 unit consisting of Technical and Health Department employees, (3) AFSCME Local 742 unit consisting of certain Library Board employees, and (4) a Police Officers unit.

Like most Wisconsin employers, especially in the southeastern portion of the State, the City of Cudahy has experienced dramatic health care cost increases. Over the years, the City has attempted to address the rising cost of health care in various ways, including changing carriers and changing insurance plans. (See Employer Exhibit 23). On January 1, 2002, the City became self insured with stop loss insurance at $50,000. [1] Prairie Services was retained as a third party administrator, but Carolyn Toms-Neary, Deputy City Clerk/Treasurer and Administrative Assistant to the Mayor, remained as the in-house plan administrator. In the year 2000, medical claims were within the budgeted amount. [2] In 2001, however, medical claims rose sharply. At the beginning of the year there was one employee on stop-loss warning, [3] but by September there were 10 on stop-loss warning and three more over the stop-loss amount of $50,000. This led to an 85% increase in health care costs over a two-year period. The per month employee cost increased from $790 in 2001 to $1,475 per month in 2003. [4] This, coupled with a $250,000 loss of revenue, left the City in serious financial condition in 2003.

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[1] Under a self-insured plan with stop loss insurance, the City pays all claims up to the insured amount ($50,000).

[2] Projected costs are determined and based on the City's previous 24-month experience.

[3] Stop-loss warning is issued by the Plan Administrator when an employee reaches $20,000 in claims.

[4] For comparison purposes, the per month employee cost under a self-funded program is equivalent to a monthly premium charged by an insurance carrier.

Further complicating matters, the City had to comply with the State Expenditure Restraint program or lose $338,000 in additional State revenue in 2003. In order to qualify, the City had to meet the State formula for 2003 limiting budgetary increases to 2.9%. The City of Cudahy is heavily dependent on State aid as a source of revenue because unlike many other communities it does not have sufficient growth to generate a substantial amount of alternative revenue. [5]

The subject of health care, both cost sharing and cost containment, has been an issue in negotiations for many years. Normally, all units are treated uniformly with respect to benefits, but not always. Since 1990, the history of contributions to health insurance by employees in the five bargaining units is as follows: Police Association – no contributions; Fire Fighters Local 1801 – no contributions, except for a 5% contribution in 1993; AFSCME 742, AFSCME 742 Technical and AFSCME 742 Library – no contributions 1990-1993, but 5% contributions since 1994.

The City and the police and fire units entered into contract negotiations in the latter part of 2000 for successor contracts to their expiring two-year agreements. Since at least 1990, the fire and police units have essentially been treated the same with respect to wage increases, benefits and term of the contract. The only significant differences occurred in 1993 when fire fighters agreed to pick up a 5% contribution in return for relaxation of the City's residency rule [6] and in 2000 the police received an increase ½% higher than the fire fighters. However, in 1994 the fire and police accepted lower health plan coverage in exchange for no premium co-pay.

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[5] The City is dependent on State aid for about 49% of its operational budget.

[6] Residency was extended to County-wide.

The City met in negotiations with the fire and police concurrently, but separately, during latter 2000 and 2001. A tentative agreement was reached with the police on May 14, 2001, which was ultimately ratified on June 19, 2001. The settlement was for three years, 2001-2003, which included annual wage increases of 3%. There was no change in health insurance contributions. Meanwhile, negotiations continued between the City and fire, but the parties were unable to reach a voluntary settlement. The Union filed a petition for interest arbitration on July 5, 2001. The WERC determined that the parties were at impasse in their negotiations and on August 6, 2002, ordered arbitration.

POSITIONS OF THE PARTIES:

Association's Position

The parties filed exhaustive and well-reasoned briefs and reply briefs. What follows is an overview of the parties' main arguments in support of their final offers and is not intended to be an in-depth presentation of their briefs. The parties should be assured, however, that the Arbitrator has read, and re-read, their briefs in their entirety in reaching his decision.

Internal Comparables

It is the Association's position that the internal comparables support its final offer. The Association contends arbitrators have historically given great weight to internal comparables, particularly in relation to benefits. Internal comparables, it is claimed, are very important where there is a well-established internal pattern, where there has been a history of like increases and where adherence to the internal pattern won't result in an unacceptable external wage relationship.

In this regard, the Association argues that arbitrators pay particular attention to the comparative wage and benefit relationship between police officers and fire fighters because both are in protective occupations and are more alike than other public employees.

Here, the Association claims, the City, until it settled the 2000 collective bargaining agreement, had recognized the importance of maintaining a level of uniformity between the benefits and wage increases it awarded its police offers and fire fighters.

Coming into this round of bargaining the insurance benefits between the two groups were nearly identical and provided that the City pay the full amount of premiums for both regular employees and retirees.

Further this has been true since 1990, except for one year, 1993. In that year, the fire fighters picked up 5% of the health insurance premium, but in all other years the police officers and fire fighters were treated equally.

The same, according to the Association, has been the case with wage increases. For the period 1991 through 2000, the two groups received the same percentage increases each year except in 2000 the police officers received a 3% increase and the fire fighters a 2.5% increase. The Association argues that in this contract the City should be addressing the one-half percent disparity instead of urging the Arbitrator to alter the historical common pattern of internal settlement that has characterized negotiations between the City and its police and fire units.

The Association argues that altering the historical relationship between the two groups by accepting the City's final offer would create the risk of dissension between Cudahy police officers and fire fighters, who work for the same employer, are likely to be called upon to respond together to some emergencies, are expected to take comparable risks and must labor together to mitigate public emergencies at very different rates of pay and benefits. Further,

according to the Association, acceptance of the City's final offer would violate the core issue of fundamental fairness.

Also, with respect to other internal comparables, the Association claims that the City's final offer treats fire fighters less favorably than AFSCME and non-represented employee groups.

As compared to AFSCME Local 742, the City agreed to a catch up of 0.31% effective December 31, 2002. This was 0.31% more than the fire fighters. The Association argues that the fire fighters, like Local 742, lagged one-half percent behind the police settlement in 2000, yet the City has not proposed a "catch-up" like it did for Local 742.

To make matters worse, the Association argues, the health insurance premium co-pay concession that the City demands of its fire fighters is one the City is not willing to impose on its non-represented employees.

In summary, it is the Association's position that the City agreed to give its police officers a wage increase that is one-half percent greater than what it awarded its fire fighters in 2000. In 2002, the City awarded AFSCME an increase that is 0.31% greater than what it offers its fire fighters as a measure of internal catch up. Also in 2002, the City continues 100% paid health insurance for its police officers, non-represented employees and the Mayor.

Finally, it is argued, also in 2002, the City, without an offer of "catch-up" comparable to that received by AFSCME, demands a 5% health insurance premium co-pay from the fire fighters represented by Local 1801.

It is abundantly clear, the Association claims, that the internal comparison criterion does not support the City's final offer. The City fails to explain why its fire fighters should be treated less favorably than its police officers, AFSCME units, non-represented employees and elected officials. The internal comparison criterion supports the Union.

Aside from the above, the Association contends that the City's final offer is unreasonable because it fails the test attendant to an involuntary change in status quo.

The Association argues, citing arbitration awards in support thereof, that the mode of analysis to determine if the change proposed by one of the parties should be adopted is as follows: 1) Has the party proposing the change demonstrated a need for the change? 2) If there has been a demonstration of need, has the party proposing the change provided a quid quo pro for the proposed change?

According to the Association, arbitrators require clear and convincing evidence to establish that 1) and 2) have been met. An additional component cited by arbitrators is whether the change can reasonably be expected to meet the need.

It is the Association's position that, here, the City has shown a desire but not a need for its proposal to shift premium costs to its fire fighters. The Association argues that if the City faced a genuine need, it would have imposed the concession now sought on its non-represented employees and highly compensated department heads and the Mayor.

With respect to the City argument that it is attempting to control insurance costs, the Union contends that even if this were true, the City has failed to demonstrate that simply shifting the premium costs to fire fighters meets that need. According to the Association, this does not

contain costs; structural changes to the insurance plan, it is argued, contain costs. The City, it is asserted, has the burden to shoulder the burden of proof that its proposal will control and not just shift costs to the employees. It has not.

The Association argues that even if one were to assume a need exists, the absence of a quid pro quo causes the City's offer to fail. Here, it is argued, any attempt to claim that the wage proposal of 3% a year is a quid pro quo is without merit because the police received the same 3% without any insurance concessions.

The Association alleges that the City's offer is further unreasonable because it erodes the wage relationship between the police officers and fire fighters to an unacceptable level of disparity. The base wages of fire fighters have fallen progressively in comparison to the police from a plus $133.76 in 1991 to a minus $1,333.78 in 2002. Under the Association's third year wage proposal they would fall to minus $1,373.79.

The Association's final offer, the Union argues, is more reasonable because it presents further erosion.

External Comparables

There is no dispute over the appropriate comparables. They are Franklin, Greendale, Greenfield, Oak Creek, St. Francis and South Milwaukee.

The Association claims its offer preserves the Association's comparable pool standing near the mean of the comparable pool. Using a 10 year motor pump operator as a benchmark and including the value of employer-paid family plan health insurance and $375 uniform allowance and comparing it to the comparables reveals that in 2002 Cudahy fire fighters will earn $1,833.62 less per year.

Looking at the annualized base wage ranking of a 10-year fire fighter/motor pump operator, Cudahy fire fighters rank below the medium at 5th out of 7 comparables.

Looking at total compensation (Employer paid health insurance) a 10-year fire fighter/motor pump operator is at the medium, ranking 4th out of 7.

The Association argues that a comparison to the average wages of the comparable pool reveals that under either parties' final offer, a top fire fighter/motor pump operator in Cudahy received a 2002 annual base wage that was $140.01 behind the average of the comparable pool.

This, it is argued, reflects a decline from being $297.65 ahead of the comparables pool average in 1998 to only $25.32 behind in 2000.

Based on the above, the Association argues that the City, by imposing a health insurance premium contribution, further diminishes the wage standing of the Cudahy fire fighter. Therefore, the Association's offer is more reasonable.

Contract Term

It is the Association's position that historically (since 1990) not only base wages and benefits between police officers and fire fighters have been comparable, so have the negotiated contract terms. The City offers no compelling reason for a change. Therefore, the Association argues, its offer of a three-year contract should be deemed more reasonable.

Uniform Allowance

Both parties offer an improvement in uniform allowance to $375 per year in 2002, but the Association increases the amount to $400 in calendar year 2003. This, it is argued, is the same amount as the police officers receive and therefore supported by the internal comparables.

It is the Association's position that said improvement is supported by external comparables as well.

Article 36 – Duration of Agreement

Both parties have a proposal to address the mandatory/permissive subjects of bargaining as to their continuance after the expiration date of the contract.

The Association submits that its proposal to continue terms and conditions that are mandatory subjects of bargaining is more reasonable than the City's proposal to only continue terms and conditions required by law. The Association argues that the City's offer is more restrictive and should be found to be unreasonable since the City has failed to demonstrate a need for such a radical change.

Side Letter re Retired

The Association seeks to continue the current side letter which it argues clarifies the collective bargaining agreement. The Association argues that its proposal to continue the side letter is more reasonable because it is preferable to the City's alternative of allowing these matters to go unresolved.

Article 33 – Severance Pay

The Association does not disagree that the City's proposal to amend Article 33 is a reasonable one. It reasons that in the course of negotiations the payment of uniform allowance upon termination became lost among the other significant issues discussed. The Association agrees that uniform allowance should be paid out consistent with the rate paid out to police

officers and consistent with the contractual uniform allowance. The Association argues that its inadvertent failure to amend its final offer to include the improvement should not be dispositive, particularly where the parties are able to effectively remedy the matter in future bargains.

Conclusion

It is the Association's position that the primary issue in dispute is the City's health insurance premium co-pay. For reasons stated above by the Association, the Association argues that the insurance issue, and the case as a whole, should be decided in its favor.

Employer's Position

External Comparables

The parties do not disagree over the appropriate comparables. However, it is the Employer's position that when comparisons are made of income per person, value of owner-occupied housing units and equalized value per capita, Cudahy ranks near the bottom in each of the categories. Additionally, it is argued, Cudahy residents' tax rate is the third highest among the comparables and 5% above the average which demonstrates a tax effort higher than the average of the comparable communities.

In spite of this, the City argues, it has maintained a competitive firefighting unit. Only two comparables, Franklin and Greendale, offered move in terms of a percentage wage increase than Cudahy.

Changing Status Quo

The City views its proposed change requiring medical plan cost sharing to be a modest change. It argues that its change meets the commonly accepted test for a change in status quo. The City urges the Arbitrator to follow the following three-part test adopted by some arbitrators:

1. Does the present contract language give rise to conditions that require a change?

2. Does the proposed contract language remedy the situation?

3. Does the proposed contract language impose an unreasonable burden upon the other party?

The City claims that the Association's position that a change in status quo requires a quid pro quo is misguided. It is the position of the City that given the substantial rising health care costs in Cudahy and a grim economic outlook, one cannot expect the Employer to offer additional consideration in exchange for restraining out-of-control health care costs.

The City's Health Insurance Crisis Requires a Change in the Contract Language

The City asserts that a review of the City's history health insurance plans, the City's attempt to control the cost of medical plans, and the City and State's fiscal and budget crisis establishes the need for the proposed change requiring fire fighters to contribute 5% of the premiums.

The City argues that the need for a change is illustrated by the City's health insurance history and its attempts to control costs. The city cites the fact that the City's health insurance was cancelled repeatedly; that the City formed a joint Labor/Management Committee to address the health insurance issue; and that after trying various options, it switched to a self-funded plan.

The City points out that in 2001 that the stop loss warnings depleted the medical plan reserves. There was a deficit of $463,000. As of November 2002, there was a $347,000 deficit in the cash reserves. This resulted in a medical plan coverage increase of 49% in 2002 and 25% in 2003.

In addition, the City stresses the fact that it is faced with providing free health insurance to retirees which is a very costly benefit. The City claims the projected cost for providing such a benefit for the current ten retirees over the term of their retirement is 1.85 million dollars.

Also adding to the City's high insurance cost is the level of the health care benefits provided. Because of the generous coverage and features, the City claims that employees and spouses are less likely to enroll in their own employer's health plan because the City offers better coverage.

The City argues that the Association was and is well aware of the City's health insurance crisis dating back to 1993, but chose to do nothing about it. The City cites its recent attempts to work with the Association through the Labor/Management Committee but to no avail. The City argues that the Association was fully aware of the crisis but did nothing to offer a solution.

The City's Financial Limitations Support Adoption of the City's Final Offer

The City argues that its loss of revenue ($250,000) in fees and permits and increased health care costs forced the City to lay off 8 positions from the 2003 budget.

Given that the City's tax levy increased 3.82% from 2002 to 2003 and the fact that the City residents are already taxed to the hilt, the City argues that raising taxes was not a reasonable solution.

Further, it is argued, the City's ability to spend is limited by the Expenditure Restraint Program (ERP). To qualify for the ERP in 2003, the City's net general fund budget increase for 2003 compared to 2002 had to be less than 2.9%. Because the City's budget increase was slightly less than 2.9%, the City will receive $338,482 in shared revenue from the State. The

ERP severely hamstrings the City's ability to spend additional funds for health insurance or any other city services. The only way to meet additional insurance costs, the City asserts, without losing the ERP money is to raise taxes. This, it is argued, is simply untenable.

Also a potential problem is the State's budget crisis. The City notes that State aid is 49% of the City's 2002 operational budget. The State faces a structural deficit for the 2002-2003 biennium of a least $2.8 billion. The City argues that the State's crisis places shared revenue in jeopardy. If it is cut, the City reasons that further cuts in spending will be required by the City.

The City avers that unlike the City's final offer, the Association's final offer completely ignores the economic realities as discussed above. The Association argues for status quo, but that, the City submits, is not a viable option. There is a need for a change in the status quo for the economic reasons discussed above.

Fire fighters' Contributing to their Health Insurance Helps to Remedy the Condition

The City contends that while a 5% contribution by the fire fighters will not cover the 25% increase in insurance costs, it is a start. The City argues that it gives fire fighters a financial stake in the discussion of how to deal with the rising cost of insurance and merely asks fire fighters to join other unionized employees who are already contributing towards their health insurance premiums.

The City's Proposed Solution to the Health Insurance Problem
Does not Place an Unreasonable Burden on the Fire fighters

The City argues that the Association offered no proof that a 5% contribution would be an unreasonable burden on them. This shows, according to the City, that the City's offer is reasonable for the quality of the medical plan coverage the fire fighters and their families receive.

However, any burden, it is argued, is softened by the City's final offer to allow fire fighters to make such contributions through a pre-tax deduction plan (Section 125 plan). The plan would save a fire fighter $310 per year.

The City claims its offer is not just "cost shifting" as claimed by the Association. It points out that the city's health insurance consultant, Charles Stanfield, testified that the Association and its members are more likely to work with the City to find solutions to the health care crisis if they are contributing to their own health insurance. Further, there is no incentive for an employee not to take the City's health insurance when they don't have to make a premium contribution.

Both the Internal and External Comparables Support the City's Final Offer

Internal Comparables

The City submits that arbitrators have long held that the single most important factor in evaluating the appropriateness of final offers, especially benefits, is internal comparables.

Here, of the five bargaining units, three contribute 5% towards the cost of health insurance. They are the three AFSCME units and reflect 57% of the workforce. This discrepancy, it is argued, creates difficulties in administering a health insurance plan and raises issues of fundamental fairness.

The City argues that the Association's reliance on the fact the City reached agreement with the police unit with no change in insurance is misplaced.

First, it is argued, there is no parity between the two units. They have different job classifications, are paid differently, and perform different job functions.

Second, it is argued, that when the City reached agreement with the police, the condition of the self-funded health insurance was not serious. It was not until shortly after that the health insurance usage create the current crisis; it was the beginning of a longer term deficit. Had the City known that a crisis was looming, it would not have settled with the police without the same proposal to pick up 5% of the cost.

Public Sector External Comparables

When comparing plans among comparables, the City contends that its medical plan premiums are substantially higher. The City claims its single plan premium is 66% higher than the comparable average in 2003 and the fire fighter plan is 41% higher.

Under the City's offer, employees would contribute $34.55 per month for a single plan and $73.75 per month for family coverage. The City argues that a single plan employee in Greendale and South Milwaukee could pay as much as $141.39 per month. In Franklin an employee with less than five years could pay as much as $59.72 per month.

For a family plan, the City claims that an employee in Greendale and South Milwaukee in the State plan could pay as much as $323.79 per month. In Franklin an employee with less than five years will pay as much as $139.50 per month. Oak Creek is the only comparable in which employees do not pay for health insurance, but, the City argues, Oak Creek is a larger and wealthier County.

Private Sector External Comparables

The City contends that, clearly, the external comparables of Aurora Health Care, Ladish, Lake Shore Medical, Lucas-Milhaup, Patrick Cudahy and Vilter, favor the City's final offer.

The average employee contribution of the external comparables is $32.52 per month single and $177.78 per month external. These comparables, the City argues, certainly support adopting the City's final offer.

The Present Circumstances do not Require the City to Offer a Quid Pro Quo

The City argues that a quid pro quo for a status quo change is not always required.

Here, it is claimed, the present circumstances do not require a quid pro quo because (1) the City's merely trying to bring the fire fighters in line with internal and external comparables in terms of health insurance, and (2) the City's rising health care costs combined with the fiscal crisis facing the City eliminate any need for a quid pro quo.

With respect to internal comparables, the City argues that interest arbitrators have long held that a quid pro quo is not necessary if other bargaining units are already contributing to their health insurance premiums. Here, the City submits, three of the five City's bargaining units representing 57% of the employees contribute the 5% proposed for this unit. The City argues that any argument that City managerial employees do not pay the 5% should be ignored because (1) they are non-represented employees and (2) they accepted a six-month delay in their 3% wage increase.

Likewise, it is the City's position that any reference to the police unit should be ignored for reasons already discussed above.

Similarly, the City argues, arbitrators have held that an employer trying to maintain the same benefit levels as the external comparables is a sufficient justification for not providing a quid pro quo. Here, it is argued as discussed above, the City's final offer is entirely consistent with the external comparables and therefore no quid pro quo is needed.

Further support for not requiring a quid pro quo, according to the City, is the rising cost of health care costs. The drastic increase in cost has been set forth above and eliminates the necessity of a quid pro quo. The City reasons that it makes no sense that given the skyrocketing medical plan cost, that the City should on the one hand ask for a 5% contribution and then give it back in the form of a quid pro quo.

Total Compensation

Total compensation package of employees in interest arbitration is one of the statutory criteria.

The City claims it is not as prosperous as the comparable communities, yet its compensation package is very competitive with the external comparables. The City makes comparisons in wages, personal leave, uniform allowance, life insurance, longevity pay, retiree health insurance benefits and holiday pay benefits and claims that the city's total financial package is very competitive with the external comparables. Moreover, the City's total financial package exceeds the Union's final offer.

Duration of the Agreement

The City contends arbitrators have encouraged parties to adopt shorter collective bargaining agreements as a means of addressing rapidly escalating health care costs. That principle applies here according to the City. The City urges the Arbitrator to adopt the shorter term so the parties will be able to address the rising health care cost issue.

Side Letter Regarding the Definition of Retired for the Purposes of the city's Benefit Plan

Contrary to the Association, the City claims this is a significant issue. The Union seeks to include as part of the contract a side letter not intended to become part of the contract.

The City points out that this side agreement resulted in one employee being allowed at the time of "retirement" to accumulate sick leave resulting in collecting an additional $8,375 at the time of his retirement.

This proposal of the Association is unreasonable and should be rejected, the City contends, because the parties did not intend it to be a part of the contract, there is no support in internal and external comparables, and the City's fiscal condition does not support such a benefit.

Conclusion

Based on all of the above, the City urges the Arbitrator to adopt the City's final offer as the more reasonable.

Association's Reply

A. The City Needs to Change the Way it Budgets Health Insurance, Rather Than the Contractual Health Insurance Status Quo

The Association disputes the Employer's claim that a change in funding of its medical plan is needed. The Association cites the City's admission that in August, 2000, its medical claims were within the budgeted amount and that it had sufficient reserves for future claims. The Association, admittedly, continued to operate within acceptable units through February, 2001. The Union argues that it is difficult to understand why the City would not increase the insurance rates and its budget, if, as it contends, health insurance cost control has been a "long-standing struggle" with which it has been forced to contend with since 1988.

Likewise, it is argued, it is difficult to understand why, if employee co-pays help control costs, the City refuses to impose the requirement on its police officers, department heads, non-represented employees and elected officials.

The Association claims only one explanation makes sense. Since 1988, the contractual status quo has allowed the City to effectively control health insurance costs. To the extent the City began to face a crisis in 2001, it was, according to the Association, primarily the product of the City's failure to properly budget.

Moreover, it is argued, as acknowledged by the City's expert witness, Stanfield, the City's insurance picture began to improve in 2002.

The Association argues that the 2001 shortfall was due to not budgeting well for 2001, and, therefore, the Arbitrator should not allow the City to now argue a health insurance "crisis."

C. The City Fails the Test Applicable to a Change in the Status Quo

The City urges the Arbitrator to abandon the well-established burden associated with a change in the status quo in favor of a less onerous test by arguing that the quid pro quo requirement is "archaic." The Association argues that the City has failed to cite a single arbitrator that characterizes the quid pro quo as archaic. To the contrary, it is argued, most of the arbitrators cited by the City specifically adopt the requirement of a quid pro quo in connection with proposals to change health insurance.

The Association cites numerous arbitration cases in which the Arbitrator, including the undersigned, has required a quid pro quo.

The Association argues that the City's contention that arbitrators have abandoned the quid pro quo requirement is wishful thinking. The appropriateness of such a requirement,

according to the Association, is particularly compelling where, as is the case here, the City has not foisted the concession on all of its bargaining units, has not imposed it on its department heads and non-represented employees and has not extended the concession to its elected officials.

D. The City's Refusal to Impose the Health Insurance Concession on its Department Heads, Non-Represented Employees and Elected Officials is the Important Consideration in These Proceedings

The Association notes that the Employer, pointing to internal comparables, argues that its offer be adopted because of the need for uniform benefits. However, it is argued, the City's concern seems to evaporate when attention is drawn to its non-represented employees, department heads and elected officials.

The Association argues that while the City takes the position that the only appropriate internal comparables are the represented units, it at the same time compares itself to a number of unorganized private sector employee groups when it is convenient. The Union submits that the City cannot have it both ways. The Association urges the Arbitrator not to accept the City'' rejection of considering the benefit levels of non-represented employees, department heads and elected officials.

E. The Facts of this Case do not Support the City's Inability to Pay Argument

The Association argues that arbitrators have imposed a relatively high burden of proof upon employers who assert an inability to pay. The Association cites in particular Arbitrator Grenig in City of Franklin and Teamsters Union Local 695 wherein he rejected the City's inability to pay argument and held that it was incumbent upon the City to demonstrate that it was in a unique situation.

Here, it is argued, the City has not demonstrated that its economic situation is so different from that experienced by other communities so as to justify the provision of a benefit package to its fire fighters that is unfair vis a vis the City's police officers, department heads, non-represented employees and elected officials.

The Association concludes that the City has not demonstrated a need for the health insurance change (the major issue) or has it offered the required quid pro quo for the change. Under the circumstances, the Association urges the Arbitrator to adopt the Association's final offer as the more reasonable offer.

Employer's Reply

The Employer in its reply brief addresses what it considers to be factual inaccuracies in the Association's brief.

A. Insurance Eligibility is not an Issue

The Employer alleges that the parties reached a stipulation that the language in the City's offer reflected the status quo and the parties were not going to brief the issue because the parties were in general agreement (Tr. 200-201). Thus, the Association's claim that the City's offer is to change status quo is inaccurate.

B. The City Settled the Police Contract on May 14, 2001

The Association claims the City settled with the police on September 5, 2001. This, it is argued, is incorrect; they reached agreement on May 14, 2001. This, the City asserts, is important because on May 14, 2001, the City was not aware that its medical plan was going to experience such a huge deficit. For said reason, the police contract has no bearing on the City's offer to have the fire fighters contribute 5% towards their health insurance.

C. Internal Comparables Support the City's Offer

The Association suggests that the AFSCME bargaining units were offered a wage increase of .31% more than the fire fighters. The City claims this is misleading because the .31% given on December 31, 2002, at the end of the contract was solely "catch-up" because they received less in 2000. The City argues that in 2000 the fire fighters in addition to a general wage increase of 2.5% received three more benefits that increased the "real" increase for some to 3.5 – 4%.

Also, it is argued, the Association neglects the fact that AFSCME employees have been contributing 5% towards health insurance premiums since 1994.

With respect to the Association's argument that the Mayor and non-represented employees do not contribute the 5%, the City argues that they are not appropriate comparables and thus not persuasive. Moreover, the wage increase for non-represented employees in 2002 was effectively 1.5% (3% mid-term) and thus ½% less.

The City finds no merit in the Association's claim that the City has offered no compelling reason for the 5% change. The City cites record testimony and exhibits which, it argues, demonstrate a legitimate need for the City to share the burden of providing health insurance to the fire fighters. The City cites the escalating insurance costs, revenue shortage and the need for layoffs as compelling reasons.

With respect to the Association's argument that if the 5% contribution is so important, then why did the City bargain it away in 1994; the City responds that it did not do so. Rather, it is argued, the fire fighters did not pay because they took a less generous medical plan. However, the City argues, the plans now are equalized, but the fire fighters still do not want to contribute.

D. No Parity Agreement Exists with the Police Department

The City notes that the Association first argues that the wage increases between the police and fire units from 1991-2000 has been comparable, but later in its brief argues that the base wages of the fire fighters have fallen progressively farther behind the police over the last ten years. The City cites this as a patent inconsistency and each is argued to suit its purpose. The City urges the Arbitrator to disregard both arguments.

E. External Comparability Mandates Acceptance of the City Offer

The City takes issue with the Association's claim that Cudahy fire fighters rank near the bottom of the external comparables. The City contends that Cudahy's fire fighters and MPOs received the second and third highest base wage rates. Additionally, the City has the most expensive medical plan in terms of the amount paid for the employees in both 2002 and 2003.

The City notes that the Association relies heavily upon the Town of Grand Chute, Dec. No. 30236-A (Schiavoni), 2002) to argue that the City should continue to fully pay for the fire fighters' health insurance. That case, the City claims, is distinguishable. There the arbitrator chose the Union's offer because the parties had recently agreed to the Wisconsin State Health Insurance Plan and insufficient time had elapsed to ascertain whether or not this move would achieve cost savings. Importantly, the City claims, the arbitrator predicted that the move would probably not achieve significant cost savings and, thus, it was only a matter of time before employees would have to make some contributions towards their health insurance, either voluntarily or by future interest arbitration.

F. Considerations of Other Issues Favor Adoption of the City's Offer

The City argues that the drug testing language and side letter agreement pertaining to retiree health insurance benefits are important issues. The City argues that no external comparables receive a benefit like the side letter and this, alone, is enough to favor the City's offer.

G. Conclusions

The City, in sum, argues that the Association's brief contains factual misrepresentations and misuses statistics to make inconsistent arguments. In so doing, the Association has failed to meet its burden of demonstrating that its offer is more reasonable than the City's offer. For this reasons, and for reasons articulated in the City's initial brief, the City urges the Arbitrator to adopt the City's final offer.

DISCUSSION:

Section 111.77(6), Wisconsin Statutes, directs the Arbitrator to give weight to the following arbitral criteria:

> (a) The lawful authority of the municipal employer.
>
> (b) Stipulations of the parties.
>
> (c) The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
>
> (d) Comparison of 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 performing similar services and with other employees generally:
>
> 1. In public employment in comparable communities.
> 2. In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) 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 private employment.

The parties did not rely on criteria (a), (b) and (e) in support of their respective final offers. Therefore, they will not be considered by the Arbitrator. Both argued criterion (f), overall compensation, but the Arbitrator does not find this criterion significant enough to affect the outcome of the case. In applying the remaining criteria, the Arbitrator must determine which offer is more reasonable based on the evidence presented.

At the outset, it should be noted that while the final offers of the parties places several issues in dispute, it is the insurance issue that is by far the most significant in all respects and, therefore, the determinative issue. Clearly, the impact of the insurance issue is so much greater than the cumulative effect of the other issues that the outcome of the other issues will not influence the outcome of the case. It follows, then, that whichever party prevails on the insurance issue will have the more reasonable final offer.

An extensive record was developed by the parties in support of their positions. Counsel for the City and Association presented their case thoroughly and effectively, and, in the end, each established its position as reasonable in its own right. It is patently clear from the voluminous

record that the underlying facts relied on by the parties in support of their position is supported by the record.

Too often, under total package final offer arbitration, interest arbitrators are left with the choice of selecting the least unreasonable of two unreasonable final offers. Here, both are reasonable for different reasons. The Employer for economic reasons and the Association because of its internal comparison with the police unit.

In the case of the Association, it is undisputed that the City voluntarily settled with the police unit for the same wage increases in 2001 and 2002 as offered to the fire fighters, but with no change in their insurance contribution. Further, it is undisputed that the City has offered no quid pro quo to the fire fighters for its proposed change in status quo regarding employee insurance contribution.

With respect to the City, no one can seriously challenge the City's contention that insurance costs have risen dramatically and that the City's economic and financial condition is in serious trouble. In fact, the Association really does not argue otherwise.

The City, in developing a budget for 2003, had to contend with a loss of revenue of $250,000 and a drastic increase in its self-funded insurance plan. The per month employee cost of insurance increased from $790 in 2001 to $1,475 per month in 2003.

It is also abundantly clear from the record, as contended, that the City's financial woes developed after its settlement with the police. It is safe to assume that but for the change in the City's insurance experience and related rising cost, the fire fighter unit would have been offered the same package as the police including the continuance of fully paid insurance by the City. This can be assumed with reasonable confidence because since at least 1990 the two bargaining

units have been treated virtually the same [7] with respect to wage increases, benefits and term of contract. Based on said past practice, there is no reason to assume that the parties would not have continued the practice in this contract.

The fact that the two units have been treated virtually the same for the last ten years is not surprising. For comparison purposes, the fire and police have more in common than with other units. Both are protective service occupations and their duties, working conditions, etc., are more alike than with other public employees. Their commonality is almost universally recognized by municipal employers in their negotiations with fire and police. It is commonplace for employers to treat the two groups the same with respect to percentage increases and benefits except for their own peculiar issues. The two units are fiercely competitive and are always comparing themselves when it comes to contract negotiations.

As discussed above, the fire and police units have been treated differently than the other three City bargaining units with respect to the 5% insurance contribution. Thus, while the other three units have been contributing 5% toward the cost of health insurance since 1994, the fire and police, through several voluntary agreements since then, have not been required to contribute the same 5%. Currently, and since 1994, 57% of the employees have contributed the 5% and 43% have not. Thus, while there is internal support for the 5% contribution, there is also strong internal support for the Association's position.

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[7] This does not mean there is parity between the fire and police, only that they have been treated the same in their settlements. The only differences occurred in 1993 when the fire, for one year, contributed 5% toward insurance premiums in return for relaxation of the City's residency rule and in 2000 when the police unit received an across-the-board wage increase that was ½% higher than that received by the fire fighters.

With respect to internal comparables, it is generally accepted by arbitrators that uniform benefits, especially as it relates to health insurance, among employees of the same employer, is vitally important because of fairness and the impact on morale of the employees. That is why in cases involving benefit issues, internal comparables are much more important than external comparables and usually the determinative criteria.[8] Under the specific circumstances of this case, the Arbitrator finds the internal comparables in favor of the Association's position. The

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[8] Other arbitrator have stated the same but differently. Arbitrator Vernon in Winnebago County, Dec. No. 26494-A (6/91), stated:

> . . . Internal comparable historically in municipal units have been given great weight when it comes to basic fringe benefits. There is great uniformity in contribution levels and in the specific benefits, particularly in health insurance. Significant equity considerations arise when one unit seeks to be treated more favorably than others.

Arbitrator Malamud in Greendale School District, Dec. No. 25499-A (1/89), stated:

> Consistency in the level of benefits among employee groups is a widely accepted tenet in labor relations.
>
> . . .
>
> The Employer demand for consistency in benefits as expressed through its final offer is accorded great weight by this Arbitrator.

Arbitrator Nielsen in Dane County (Sheriff's Department), Dec. No. 25576-B (2/89), stated:

> In the area of insurance benefits, a uniform internal pattern is particularly persuasive. . . . Unless the benefit is demonstrably substandard, and not made up for in some other component of the compensation package, external comparables will not generally have great weight in disputes over the features of an insurance plan.

Arbitrator Kessler stated in Columbia County (Health Care), Dec. No. 28960-A 8/97):

> Particularly in the administration of health insurance benefits, a government should be treating all of its employees the same.

Arbitrator so finds because the fire's historical and traditional internal comparable, the police, are not being asked to make the same 5% contribution. Frankly, if this were a situation where the City had proposed that all employees begin making a 5% contribution, the Arbitrator would be inclined to find otherwise. But, that is not the case. Here, the fire's primary comparable continues to have 100% of its insurance cost paid by the City.

Having concluded that internal comparability favors the Association, the next question is whether there are any other reasons that would offset the persuasiveness of the internal comparable criterion as the determining factor. The City answers in the affirmative citing the financial and economic conditions of the City and external comparables.

First, with respect to external comparables, the Arbitrator finds that the importance of said criterion is diminished by the internal comparable criterion which is routinely held to be the more important of the two criteria.

Secondly, the external comparables, regardless of the weight given, are not decidedly in favor of either party's position.

Of the six external comparables,[9] one (Oak Creek) requires no employee contribution; one (Franklin) requires no contribution by employees with more than five years of service, two (Greendale and South Milwaukee) require contributions in three of its four plans offered, and two (Greenfield and St. Francis) require employee contributions in all of their plans.

Thus, if employees among the comparables choose the lowest cost plan, they would not have to contribute in four of the six comparables: Oak Creek, Franklin for those with more than five years service, Greendale and South Milwaukee. On the other hand, but for the least

[9] The parties are in agreement that the appropriate comparables consist of the following municipalities: Franklin, Greendale, Greenfield, Oak Creek, St. Francis and South Milwaukee.

expensive plans, employees in four of the six comparables have to contribute to their plan, and in a fifth, Franklin, employees with less than five years of service have to contribute 15%.

Given the above, there is support for both parties' positions among the external comparables. On balance, however, external comparables favor the Employer because only Oak Creek and Franklin (for employees with more than five years of service) have 100% employer contribution regardless of plan. The external comparables, however, are not sufficiently strong to outweigh the fire's longstanding internal comparability with the police.

The deciding issue, then, becomes whether the City's financial limitations and its experience of dramatic increases in insurance costs, outweigh the historic fire/police bargaining relationship. The City argues that because of its situation, there is a compelling need to change the status quo and have this unit of employees contribute 5% towards the cost of insurance and that said proposal reasonably addresses the overall insurance problem of escalating costs.

In the opinion of the Arbitrator, there is no question the City needs to make changes to address the insurance issue sometime soon. The cost of the City's self-funded insurance plan has increase 85% [10] in the last two years. This at a time that it can least afford the added cost. Whether the City's proposal to have employees pick up 5% of the monthly cost adequately addresses the need is not as clear. Much of the City's increase in cost was due to an unanticipated substantial increase in employees reaching or exceeding the stop loss figure of $50,000 in insurance claims which, of course, would not be affected or deterred by employees contributing to their insurance plan. However, even if the City's proposal is not particularly

[10] The Association argues that if the City had budgeted better for its insurance needs, it would not have experienced such a large deficit in its self-funded plan. However, regardless of the City'' budgeting, the fact remains that the insurance cost per person would still be the current $1,475 per month.

effective in curbing the rise in insurance costs, the fact remains that the cost of the self- funded plan has risen so dramatically that it is not unreasonable for the City to expect employees to help with the cost, especially with the City in such a budgetary crisis. In any event, employees, along with the Employer, will become stakeholders and hopefully, this will help control future increases in health insurance costs.

However, the Employer has not offered a quid pro quo for its change in status quo. It argues that a quid pro quo should not be required here because (1) the City is merely trying to bring the fire fighters in line with internal and external comparables in terms of health insurance, and (2) the City's rising health care costs combined with the fiscal crisis facing the City eliminates any need for a quid pro quo.

As to the first, the Arbitrator has already concluded that under the circumstances of this case the internal comparables favor the Association and that internal comparables are more important than external comparables.

As to the second point, the undersigned discussed the issue of quid pro quo in Oconto Unified School District, Dec. No. 30295-A (10/02) as follows:

> . . . it is well established through numerous interest arbitration wards that a quid pro quo is required where one side, the Union here, seeks a change in the status quo. There is no set answer as to what constitutes a sufficient quid pro quo. It is, in the opinion of the Arbitrator, directly related, inversely, to the need for the change. Thus, the quid pro quo need not be of equivalent value or generate an equivalent cost savings as the change sought. Generally, greater the need, lesser the quid pro quo. (p. 26-27)

The City argues that no quid pro quo at all is required in this case and cites several cases in support thereof. However, those cases are not directly on point because in all but one of those cases the Employer relied on internal comparables and all of the internal comparables were

consistent with the proposal made by the Employer in arbitration. [11] That simply is not the case here. Here, the comparables relied upon by the City, internal and external, do not overwhelmingly support its proposal as in the cases cited. Internally, neither the police nor the non-represented employees contribute. [12]

There may be cases in which the circumstances are such that a quid pro quo is not a prerequisite in changing status quo, such as in cases where the minority of outstanding employees are being asked to simply be treated the same and uniformly with all other employees of the Employer. Here, three of the five internal units, or 57% of the employees, contribute the 5% proposed amount. The fire fighters are asked to break ranks with their historical and traditional internal comparable, the police, without a quid pro quo. One would have to reasonably assume that if the City would have reached a voluntary agreement with the fire fighters requiring them to begin paying $73 per month toward health insurance, that such a

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[11] In Pierce Human County Services, Dec. No. 21816-A (Weisberger, 1995), all other bargaining units voluntarily accepted the proposal made in arbitration. In Sauk County, Dec. No. 29584 (Vernon, 2000), the employer's proposal in arbitration was consistent with all of the internal comparables. In City of New Berlin, Dec. No. 29061 (Yaffe, 1997), both of the other bargaining units voluntarily agreed to employee contributions toward health insurance as proposed by the employer in arbitration. In City of Beaver Dam, Dec. No. 26548-A (Oestreicher, 1991), the City voluntarily settled with two of its bargaining units requiring employees to contribute 5% toward health insurance premium cost. The City extended same to the unrepresented employees. The only remaining units were fire and police, both of which were in arbitration.

The only case in which external comparables were relied upon was LaCrosse County, Dec. No. 30321-A (Krinsky, 2002), where the internal comparables were contested and the arbitrator, relying on external comparables, found that they clearly favored the County.

[12] Usually, comparisons are not made between represented and non-represented employees. It is only because the Employer argues that a compelling need exists for a change that the Arbitrator points out that despite said claim, the non-represented employees, who are covered by the same insurance plan, are not required to contribute. While it is true that the non-represented employees had their initial wage increase delayed six months, this does not address the need for a change in insurance contribution.

change in status quo would not have been achieved without an adequate exchange of some value. This is especially true since there has been no change in the status quo with the police unit. The Arbitrator does not question the City's position that had the same financial and economic conditions existed at the time of the police negotiations, they would have demaned the same change in insurance contributions now requested of the fire fighters. But, notwithstanding same, the fact remains that the police continue with status quo and are able to at least attempt a quid pro quo in negotiations or arbitration in their successor agreement if a change is proposed. Further, the City's final offer not only lacks a quid pro quo, but does not provide a third year with a 3% wage increase like the police settlement. The fire unit would be in a position of trying to maintain their relationship with the police by attempting to get the same 3% for 2003 just to keep up. On the other hand, the police are still able to negotiate a quid pro quo for the employees. Under the circumstances, a quid pro quo of some value is required.

In reaching this decision the Arbitrator is mindful of the City's financial condition, as discussed earlier, and that it may deteriorate due to a cut in state aid [criterion (g)]. But, the City's financial ability to meet the approximate $17,700 [13] cost of the Association's final offer, which is a component of factor (c) must be balanced with the other component of (c), "the interests and welfare of the public". Here, the interests and welfare of the public include not only the fiscal impact of the offers, but, also, the impact of the offers on the public's interest in having a stable and harmonious work force. An important consideration is the disruptive affect the City's offer will have on the relationship between the fire and police and the issues it will create at the bargaining table.

[13] Twenty fire fighters at $73.75 per month.

In balancing the City's financial condition with the impact the City's offer to change the status quo without a quid pro quo would have on the historical relationship between the fire and police units and the impact it would have on the morale of the fire fighters, the Arbitrator is of the opinion that the interests and welfare of the public will best be served with the adoption of the Association's final offer.

In so concluding, the Arbitrator is not in disagreement with the City that as a matter of fairness all employees receiving uniform benefits should make the same contribution. The City will best achieve its goal by timing its payments to equally impact all outstanding employees.

REMAINING ISSUES:

Although the insurance issue is the determinative issue, the other issues[14] deserve discussion.

Duration of Agreement

A) The City argues that arbitrators have encouraged parties to adopt shorter collective bargaining agreements as a means of addressing rapidly escalating health care costs. While that may be true, here two years have elapsed since the expiration of the parties' last collective bargaining agreement and would under the City's proposal be expired. In this case, more important than the term of the contract is the insurance issue itself. Further, a three-year contract would keep the fire and police units in step as they have been for at least the last ten years.

[14] One of the issues relating to insurance eligibility under "Article 25 Medical and Health Insurance" was resolved at the hearing on the basis of a stipulation that the language in the City offer reflected the status quo and that the issue would not be briefed (Tr., 200-201).

B) With respect to the mandatory/permissive aspect of the duration provision, the Association's proposal will apply the status quo doctrine to all mandatory subjects while the City's offer would apply the doctrine to those terms and conditions required by law.

The City's proposal is a change from the parties' established past practice. Since no evidence was presented in support of such a change, and the fact that the Association's proposal would offer more stability to the parties' relationship, the Arbitrator finds the Association's final offer more reasonable.

Side Letter re Retirees

The side letter in dispute has been in existence for several years with no apparent problem and the Association now proposes to make it a part of the contract. The Employer seeks to discontinue the letter because it resulted in one employee, at the time of "retirement" to accumulate sick leave resulting in collecting an additional $8,375 at the time of his retirement.

The apparent windfall by one employee was something not intended by the parties. The Association does not address this issue. Therefore, I find that the City's offer is more reasonable.

Further, the Association's proposal would not just continue the side letter, but would incorporate it into the contract and make it permanent.

Severance Pay

The City proposes to amend Article 33 to include the payment of uniform allowance upon retirement.

The Association does not disagree that the change is reasonable. It claims it inadvertently failed to amend its final offer to reflect the change made by the Employer. Under the circumstances, the Arbitrator finds the City's final offer to be more reasonable.

Uniform Allowance

Both parties offer an improvement in uniform allowance to $375 per year in 2002, but the Association proposes to increase the amount to $400 per year in 2003. The City makes no offer in 2003 since it is only proposing a two-year agreement.

The Arbitrator finds the Association's offer reasonable, standing alone, since it is the same amount the City agreed to provide to its police officers and is probably what the City would have agreed to with the fire unit had a voluntary settlement been reached.

Committee to Study Drug Testing

The City proposes to delete, as ineffectual, the continuation of the current drug testing language in the collective bargaining agreement, in its entirety.

The City argues that said provision, that provides for the creation of a joint labor/management committee to study drug testing, should be deleted because the parties have made no progress in this area.

The Employer correctly points out that since the inception of the drug testing provision in 1994, the labor/management committee, which was finally formed in February 2001, has not resulted in an agreement over the issue. I agree with the Employer that the committee should either make a sincere effort to address the issue it was created to study or it should be abandoned. It makes no sense for the parties to be committed to a procedure that is not being utilized. However, deleting the contractual language alone does not resolve the issue either. Therefore, in

the opinion of the Arbitrator, the contractual language should be left in place and the parties make a concerted effort to utilize the procedure and resolve the drug testing issue. Exactly why it has not been utilized is not clear from the record. The drug testing issue is an important one and needs to be addressed.

CONCLUSION

Based upon the statutory criterion listed above and the record established in this proceeding, including testimony, exhibits and arguments of the parties, and for the reasons discussed above, the Arbitrator selects the final offer of the Association and directs that it be incorporated into the parties' collective bargaining agreement for 2001-2003.

Dated at Madison, Wisconsin, this 17th day of April, 2003.

Herman Torosian /s/
Herman Torosian, Arbitrator

Appendix "A"

July 18, 2002

FINAL OFFER
CITY OF CUDAHY
TO THE
I.A.F.F. LOCAL NO. 1801

1. Article 18 – Wages (p. 7): Revise percentage increase to read as follows:

1/1/01	3.0%	Across the Board Increase
1/1/02	3.0%	Across the Board Increase

2. Article 23 – Uniform Allowance (p.8): Add the following:

"Effective 01/01/02 ($375.00) three hundred and seventy-five dollars/year.

3. Article 25 – Medical and Health Insurance A. (p. 9): Revise to read as follows:

"The City will pay the full amount of the single and family plan, hospital and surgical insurance for all employees. Such hospital and surgical coverage shall be provided to the employee on the first of the month following thirty (30) days of employment.

Effective upon the receipt of the arbitrator's award or December 31, 2002, whichever occurs first, employees will contribute 5% per month toward the cost of either the single or family plan by payroll deduction.

The City will make available to this bargaining unit the section 125 plan offered to certain other City employees to allow pre-tax deductions for payment of premiums.

E. Revise to read as follows:

Retiree Health Insurance: Medical and hospital insurance coverage shall be available to all retired full-time employees. The City shall pay the cost of coverage for retired full-time employees, provided, however, that any full-time employee who retires on or after the date of the arbitrator's award shall be required to contribute toward the cost of health insurance on the same basis as active full-time employees under the terms of this Agreement. This coverage shall be identical to the coverage provided to regular full-time employees.

4. Article 33 – Severance Pay (pg. 12): As a matter of housekeeping, re-letter the subsections within Article 33-Severance Pay as follows:

A. Vacation (Continue current text.)
B. Sick Leave (Continue current text.)
C. Uniform Allowance (revised)
D. Holidays (Continue current text.)
E. Accumulated Overtime (Continue current text.)
F. Termination of Benefits (Continue current text.)

RWM
7/19/02

Revise **C.** ***Uniform Allowance*** to read as follows:

One twelfth of the prevailing unpaid uniform allowance will be due the employee per full month of employment in the year of termination based on three hundred fifty dollars ($350.00) in 2001 and three hundred seventy-five dollars ($375.00) in 2002.

5. Article 36 – Duration of Agreement (pg. 14): Revise as follows:

"Except as provided below, the provisions of this agreement shall become effective on the dates hereinafter set forth in this instrument and shall continue in full force and effect until December 31, 2002.

In the event an agreement is not reached for the renewal of the contract by that date, to the extent required by law, the existing terms and conditions that are primarily related to wages, hours and conditions of employment shall continue to apply until settlement is reached in negotiations or interest arbitration. Conferences and negotiations shall be carried on between the City and the Association during the year of the contract as follows:....(Continue the remainder of the Article.)

6. Article 45 – Drug Testing (p. 16): Delete in its entirety as obsolete.

7. Tentative agreements per attached.

8. Status quo on the balance of the contract.

ON BEHALF OF THE CITY OF CUDAHY:

Roberta Mulcahy — 7/19/02

Date

T:\CLIENTA\023044\0077\A0408177.1

Appendix "B"

PRELIMINARY FINAL OFFER
OF
LOCAL #1801, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL-CIO
TO
THE CITY OF CUDAHY

City of Cudahy (Fire Department)
Case 92 No. 60108 MIA-2406

July 11, 2002

Local #1801, International Association of Firefighters, AFL-CIO, hereinafter "Local 1801", proposes to continue the terms of the January 1, 2000 to December 31, 2000 collective bargaining agreement except as modified below and by the tentative agreements attached hereto.

1. Amend ARTICLE 18 - WAGES as follows:

Wages to reflect a ~~2.5%~~ 3% increase in base hourly rate for all job classifications effective 1/1/2001, an additional 3% increase in base hourly rate for all job classifications effective 1/1/2002 and an additional 3% increase in base hourly rate for all job classifications effective 1/1/2003.

(Amend Appendix A in accordance with the above across the board increases.)

2. Amend the first paragraph of ARTICLE 23 - UNIFORM ALLOWANCE, as follows:

Uniform allowance shall be paid at a rate of ~~three hundred and twenty five ($325.00) dollars per year. Effective 01/01/98~~ ($350.00) three hundred and fifty dollars per year. Effective 01/01/02 the rate shall be three hundred and seventy five dollars ($375.00) per year. Effective 01/01/03 the rate shall be four hundred dollars ($400.00) per year.

Continue the remainder of the Article.

3. As a matter of housekeeping, re-letter the subsections within ARTICLE 33-SEVERANCE PAY as follows:

A. Vacation (Continue current text).
B. Sick Leave (Continue current text).
C. Uniform Allowance (Continue current text).
D. Holidays (Continue current text).
E. Accumulated Overtime (Continue current text).
F. Termination of Benefits (Continue current text).

JBK 7/11/02

4. Amend the first paragraph of ARTICLE 36 - DURATION OF AGREEMENT, as follows:

Except as provided below, the provisions of this agreement shall become effective on the dates hereinafter set forth in this instrument and shall continue in full force and effect until December 31, ~~2000~~ 2003.

5. Amend the first sentence of the second paragraph of ARTICLE 36 - DURATION OF AGREEMENT, as follows:

> "In the event an agreement is not reached for the renewal of the contract by that date, to the extent allowed by law, the existing terms and conditions that are primarily related to wages, hours and conditions of employment shall continue to apply until settlement is reached in negotiations or interest arbitration."
>
> Continue the remainder of the Article.

6. Amend the first WHEREAS clause under the WITNESSETH section of the Agreement on page 1 to show that negotiations took place during the years "2000", "2001" and "2002".

7. Amend the first full paragraph of the side letter contained on page 20 of the collective bargaining agreement to read:

> Cudahy Firefighters Local #1801 agree to the following to be contained in a "Side Letter of Agreement" to be in effect ~~01/01/00 to 12/31/00~~ 01/01/01 to 12/31/03.
>
> Continue remainder of side letter.

8. Status Quo on remainder of contract.

The above offer, including the attached tentatives, constitutes the final offer of Local 1801 for the purposes of interest arbitration pursuant to Section 111.77(4)(b) of the Municipal Employment Relations Act. A copy of such final offer has been submitted to Attorney Robert Mulcahy, counsel for the other party involved in this proceeding. I have received the June 28, 2002 final offer of the City of Cudahy. I have signed this document and initialed each attached page.

John B. Kiel, Attorney
On behalf of Local #1801

7/4/02
Date

TENTATIVE AGREEMENTS
Between
LOCAL #1801, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL-CIO
and
THE CITY OF CUDAHY

City of Cudahy (Fire Department)
Case 92 No. 60108 MIA-2406

July 11, 2002

Revise ARTICLE 20-JURY DUTY as follows:

In the event an employee is summoned for Jury Duty, and ~~this~~ his/her commitment falls on an employee's regularly assigned duty day, the City shall release the employee for Jury Duty. Once the employee is finished with Jury Duty for that day, the employee will return to work. The employee shall be entitled to a regular department salary, but must return to the City any monies earned for Jury Duty on his/her duty day, excluding travel and parking fees.

Add the following as a new ARTICLE 49-LABOR/MANAGEMENT HEALTH COMMITTEE:

The Union and the City agree to establish a Labor/Management Health Committee. The Committee shall have at least one (1) representative from Local 1801. The Committee shall meet as needed at the request of Labor or Management to discuss and resolve issues related to the City Health Insurance.

The Committee shall have access to all relevant information and reports from consultants, insurance carriers, and third party administrators subject to relevant State and Federal Statutes.

The Committee shall make recommendations to the Common Council pertaining to the administration and financing of the Health Benefits plan.

OK
RW
7/19/02

7/11/02