

BEFORE THE ARBITRATOR

In the Matter of the Final and Binding Interest Arbitration Dispute between

LABOR ASSOCIATION OF WISCONSIN, INC.

and

CITY OF TOMAHAWK (POLICE DEPT.)

WERC Case 22, No. 61000, MIA-2456
Dec. No. 30558-A

APPEARANCES:

For the Association:

Mr. Thomas A. Bauer, Labor Consultant, Labor Association of Wisconsin, Inc., 206 South Arlington Street, Appleton, Wisconsin 54915.

For the Employer:

Mr. Paul Garner, Clerk-Treasurer, City of Tomahawk, P.O. Box 469, Tomahawk, Wisconsin 54487.

ARBITRATION AWARD

The Association has represented a bargaining unit of police officers for a number of years; the parties' most recent collective bargaining agreement expired on December 31, 2001. On March 14, 2002, the Association filed a petition with the Wisconsin Employment Relations Commission requesting arbitration pursuant to Section 111.77 (3) of the Municipal Employment Relations Act, Wis. Stats. Efforts to mediate the dispute by a staff member of the Commission were unsuccessful, and an impasse investigation was closed by the Commission's order for binding arbitration dated February 24, 2003. The undersigned Arbitrator was appointed by Commission order dated March 25, 2003. A hearing was held in this matter in Tomahawk, Wisconsin on May 28, 2003. No transcript was made, both parties filed briefs, and the record was closed on June 30, 2003.

Statutory Criteria to be Considered by Arbitrator

Section 111.77(6)

- (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 these costs.
- (d) Comparisons of wages, hours and conditions of employment of the 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 employes, 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 Association's Final Offer

1. Appendix "A" -- Wage Schedule: Increase all wages steps as follows:

Effective January 1, 2002 -- 3.0% across-the-board

Effective January 1, 2003 -- 3.0% across-the-board

2. Article 24 -- Duration: Modify to reflect a 2-year Agreement effective January 1, 2002 through and including December 31, 2003.

The Employer's Final Offer

1. Amend Article 14.04, Section C HEALTH INSURANCE to read: in 2002 the City will pay 95% of the lowest cost plan available in Lincoln County from the Wisconsin Public Employers' Group Health Insurance Plan and the employee shall pay 5% of the premium of the lowest cost plan available in Lincoln County from the Wisconsin Public Employers' Group Health Insurance Plan. In 2003 the City will pay 92.5% of the lowest cost plan available in Lincoln County from the Wisconsin Public Employers' Group Health Insurance Plan and the employee shall pay 7.5% of the premium of the lowest cost plan available in Lincoln County from the Wisconsin Public Employers' Group Health Insurance Plan.

2. Amend appendix "A" by adding an amount equal to 3% to all classes for 2002, and 3% to all 2002 classes for 2003.

3. Amend all references to reflect a 2 year contract.

4. All contract revisions are retroactive to January 1, 2002.

Stipulations of Fact

The parties stipulated to the following:

1. The City has not argued inability to pay the Association's final offer.
2. The City did not present alternative health plans during the course of negotiations.
3. All employees in the bargaining unit are currently covered by CompCareBlue North.
4. The decision in this matter will be applied to the concurrent disputes between the City and the two other bargaining units of City of Tomahawk employees represented by the Labor Association of Wisconsin, Inc.
5. The parties have agreed to make the results of this matter retroactive to January 1, 2002, including for employees who have left the City's employ since that date. The total employment in the bargaining unit is currently five, all of whom are patrol officers.

The Association's Position

The Association contends that the City's final offer would result in employees paying an above average premium contribution while receiving a below average wage increase. The Association notes that there is no issue over the lawful authority of the City or its ability to pay the Association's final offer, and that there are no improvements in fringe benefits negotiated that would offset the increased employee contributions the City seeks. The Association argues that its offer is not contrary to the interests and welfare of the public as its wage request is below the average increase voluntarily granted in comparable departments and there are no other improvements in economic or non-economic fringe benefits that would adversely impact the interests of the public.

The Association notes that this is the first interest arbitration between the parties, and argues for a list of comparables that includes the Price County Sheriff's Department as well as the Lincoln County Sheriff's Department, and the cities of Medford and Phillips. The Association argues that while Phillips and Medford are stipulated as comparables by the parties, Lincoln County competes directly for labor with the City as the City is located within it, while Price County also competes for labor in its Sheriff's Department, as it is a neighboring county with a similar economy, and the dispersed population in this part of the State means that there is a shortage of comparables in the immediate vicinity. Of the communities argued as comparables by the City, the Association accepts Merrill and Rhinelander "for the purposes of future negotiations", while noting that they have populations significantly larger than Tomahawk. The Association objects to use of Ladysmith, Clintonville, Waupaca and Ashland as comparables because these cities are between 73 and 118 miles from Tomahawk. The Association objects to Eagle River as a comparable because its police officers are not eligible to invoke final and binding arbitration in a contract dispute; as a community with a population under 2500, it is excluded by statute from that provision. The Association makes no comment with respect to Mosinee.

The Association argues that its willingness to accept a 3.0 percent wage increase for each of the two years of this Agreement was tied to its desire to maintain the status quo regarding insurance, and

that the employees will receive a below average wage increase regardless of which final offer is selected. The Association calculates the average two-year increase in the area at 7.03 percent compared with a 6.0 percent increase it computes for this unit, and argues that this unit will fall from second place to third in the rankings on wages regardless of which offer is selected. The Association argues that this is not the only reason why the City's health insurance proposal is unreasonable, but is certainly a factor.

The Association argues that the existing, and continuing, language in the Agreement allows the City to pay its health insurance premiums based on the least expensive plan available under the State of Wisconsin overall plan, a "non-qualified" plan that has a limited number of providers in the County. The Association notes that if the contract had language similar to Phillips, the premium would be \$116.78 higher for single plans and \$263.18 higher for family plans. The Association notes that the consequence is that all employees have chosen the least expensive plan, because there is such a cost difference to the employee for the other alternatives. The Association also argues that the level of benefits and availability of providers is significantly different for other plans offered to employees in the other comparable communities, such that the City is comparing a less attractive plan overall. The Association argues that along with this, the City is currently paying a below average premium rate for both the single and family plans, and that nothing in the record demonstrates a compelling need for the City's request to increase the employee contribution. The Association argues that there is nothing here that demonstrates that any form of quid pro quo has been offered by the City for the change. The Association also argues that the cost of living figures do not favor the City's proposal because the Consumer Price Index for April 2003 was 3.2 percent, while the three percent across-the-board increase in wages for each year nets out to 0.8 percent in 2003 for employees taking the family plan or 2.1 percent for those taking the single plan, after deducting the effective cost to the employee of the change in health insurance. For 2002, the Association computes an effective 1.6 percent increase in overall earnings for employees taking the family plan and a 2.5 percent "lift" for those taking the single plan if the Employer's proposal prevails.

The Association, in summary, argues that the City has offered no evidence that introducing a requirement for a family plan employee to pay \$179.10 in the first year and \$203.80 in the second year for a "qualified plan" (\$83.60 and \$92.40 respectively for a single employee) is justified when compared to health benefits enjoyed by other employees in the area or based on any quid pro quo offered by the City.

The Employer's Position

The City notes that its second-largest source of revenue is the shared revenue program, under which its general fund expenditures are limited to 4.2 percent increases in 2002 and three percent in 2003. The City argues that an average of \$37,767 per year in State payments is not something it can afford to lose, noting that its general fund tax levy has had to increase by 7.3 percent in 2002 and 33.7 percent in 2003, because of dwindling revenue in its other general fund sources. These pressures, the City argues, have led to the property tax freeze proposal demonstrated in the record, which is closer to becoming a reality because of the combination of these pressures. The City notes

that maintaining conformity with the State contribution requirements has been made extremely difficult by premium increases in recent years, particularly 43 percent for a family plan and 43.2 percent for a single plan in 2002, with a further increase of 5.7 percent for families and 5.5 percent for single plans in 2003.

The City argues that its base of comparables makes more sense than the Association's, because a larger group of similarly sized cities (Clintonville, Ladysmith, Medford, Waupaca and Mosinee) join with a group of comparables with a geographic basis (Eagle River, Ashland, Rhinelander, Phillips, Medford, Mosinee and Merrill) to provide a more rounded picture than the two cities and two counties the Association has urged as comparables. The City contends that in addition to Lincoln County being a different type of employer, the Association has inaccurately portrayed Lincoln County's health insurance plan, by omitting a potential out-of-pocket maximum family deductible expense of \$2100 provided for in that plan. The City calculates that for the year 2002, three out of the 10 communities require a payment for single plan insurance, averaging \$37.09 a month, while seven require a family plan payment, averaging \$69.99 per month. The City points out that both of these averages are higher than the City's proposed payment of \$18.70 for single plans and \$46.61 for family plans. For 2003, the City argues that seven of the ten comparable communities require payments averaging \$36.73 for a single plan, while nine of the ten comparables require premium payments for family plans, averaging \$115.69 per month. The City argues that its proposed employee contributions of \$29.64 for single plans and \$73.77 for family plans in 2003 compare very favorably to these employee costs. The City also notes that the only available internal comparable, the non-represented employees of the City, have received a package identical to the City's final offer.

The City further argues that the Association's computation of the net wage effects of the City's proposal fails to take into account an added cost of one percent in the contract total as a result of the need to make payments on unfunded retirement liabilities, and that if the parties' respective figures are conformed to the same number of positions of the bargaining unit, the apparent difference between the parties' computations of costs dissipates. The City contends that using these numbers, the total cost of the contract to the City exceeds both the 1.2 percent increase in the CPI for 2002 and the three months of data available for 2003, which annualize to 2.8 percent. The City notes that its overall cost of contract increase average is 4.35 percent per year compared to what appears to be an average increase of two percent per year in the CPI. The City further argues that even the Association's exhibits point to the dramatic increase in health insurance premiums, while the Association has proposed no way of dealing with this.

The City argues that the greatest weight should be placed on the need for the City to continue to participate in the "ERP", which while voluntary is treated by most communities as a requirement because cities cannot afford to lose the State revenue this program provides. The City further argues that comparison to other communities clearly favors the City's proposal because the trend in comparable communities is clearly toward employee contributions for health insurance, while in both years of the contract the City's proposal provides for less than the average contributions required of employees in comparable communities. The nonrepresented City employees are the only available internal comparable, which favors the City's proposal as they are receiving an increase and package similar to the City's proposal. And the total package cost of both final offers exceeds

the CPI. The City argues that there is no evidence in the record indicating any other factors that should be considered, and thus that its final offer better meets the statutory criteria.

Discussion

The first question that must be addressed is what communities should be considered comparable to Tomahawk. Medford and Phillips are stipulated by the parties. Among the remainder of the City’s proposed comparables, Eagle River and Mosinee are within about 60 miles; while I note that Eagle River employees enjoy less bargaining power than Tomahawk’s employees, there is no provision in the statute barring consideration of a city falling below 2500 in population, there is a dearth of very similar communities to Tomahawk nearby, and it is no more of a stretch to compare Tomahawk to Eagle River on the one end than to compare it to Rhinelander on the other. Mosinee, meanwhile, did not draw any particular objection from the Association (though not much information was offered in relation to that city, while its industrial base may make it at least as different from Tomahawk, in another way, as Eagle River is.) I find Ashland, Clintonville, Ladysmith and Waupaca to be simply too remote from Tomahawk to be useful as comparables. The City objects to consideration of both Lincoln County Sheriff’s Department and Price County Sheriff’s Department; in police department disputes, it is quite common to include the Sheriff’s Department of the county in which the city is located as one comparable even though the county is obviously geographically different in nature, and I do so here, but there is no conspicuous reason why Price County Sheriff’s Department should be used as a comparable when several other contiguous counties are not. And I will include Rhinelander and Merrill here, since the Association has not explicitly objected and since they are nearby, while noting that both have larger populations and stronger industrial bases than Tomahawk. The resulting list of comparables is not particularly similar to Tomahawk, but does provide a reasonable range, including two cities about the same size as Tomahawk, two that are about twice the size, and two that are about half the size.

Combining the available data from City Exhibit 7 and Association Exhibit 12 yields the following:

Table 1:

Employer			2001	2002	2003
Eagle River	Premium	Single	\$331.86	\$359.09	\$371.70
		Family	\$913.20	\$977.12	\$1022.82
	Employee Share	Single	0	0	0
		Family	20%	20%	20%
Lincoln County	Premium	Single	unknown	unknown	unknown
		Family	unknown	unknown	unknown

	Employee Share	Single	0	0	0
		Family	0	0	0
Medford	Premium	Single	n/a	n/a	\$391.06
		Family	\$659.69	\$789.65	\$977.67
	Employee Share	Single	n/a	n/a	10%
		Family	10%	10%	10%
Merrill	Premium	Single	\$342.96	\$428.70	\$462.14
		Family	\$685.90	\$857.37	\$924.24
	Employee Share	Single	0	0	\$12
		Family	0	0	\$24
Mosinee	Premium	Single	\$240.70	\$296.95	\$307.60
		Family	\$590.55	\$731.10	\$756.85
	Employee Share (uncertain; apparently in arbitration)				
Phillips	Premium ¹	Single	\$296.90	\$373.90	\$438.65
		Family	\$739.90	\$932.20	\$1032.89
	Employee Share	Single	0	0	0
		Family	0	0	0

¹ The City and the Association differ as to the Phillips figures for 2003, with the City calculating them at \$395.20 for single and \$983.70 for family premiums. I rely on the Association's here because the record does not reveal evidence to support the City's implied assumption that all Phillips employees are taking the least expensive plan, while Association Exhibits 8 and 12 together demonstrate that Phillips has contracted to pay more than that level.

Rhinelanders	Premium	Single	\$297.30	\$342.99	\$417.76
		Family	\$891.89	\$1028.98	\$1253.30
	Employee Share	Single	0	0	10%
		Family	0	0	10%

This in turn yields a comparison among the dollar value of the employers' health insurance contributions as follows:

Table 2.

Employer	Employer's contribution 2001-single	Employer's contribution 2001-family	Employer's contribution 2002 – single	Employer's contribution 2002 – family	Employer's contribution 2003-single	Employer's contribution 2003-family
Eagle River	331.86	730.56	359.09	781.70	371.70	818.26
Lincoln County	(unknown)					
Medford	(unknown)	593.72	(unknown)	710.68	(unknown)	879.90
Merrill	342.96	685.90	428.70	857.37	450.14	900.24
Mosinee	(uncertain)					
Phillips	296.90	739.90	373.90	932.20	395.20	1032.89
Rhinelanders	297.30	891.89	342.99	1028.98	375.98	1127.97
Average	317.26	728.39	376.17	862.19	398.25	951.85
Tomahawk (Association)	261.40	651.10	373.90	932.20	395.90	983.70
Tomahawk (Employer)	261.40	651.10	355.20	885.59	365.56	909.92
Association offer relative to average	(-17.6%)	(-10.61%)	-0.6%	8.1%	-0.6%	3.3%
Employer offer relative to average	(same)	(same)	-5.6%	2.7%	-7.6%	-4.4%

These amounts, of course, are not all that is relevant to a health-insurance comparison, but Tomahawk appears in the general range of most of the comparables as regards maximum out-of-pocket costs, though these are achieved by different combinations of drug charges and co-pays in different comparables and the details are not well documented in the record. The most significant recent change among the comparables in this respect is in Lincoln County, where deductibles and co-pays increased for 2002; by 2003, the amounts rose to as much as \$300 per family member, up to three, within a PPO network, and more outside, with co-pays thereafter at 20% up to a maximum of \$400 per covered individual within the PPO network.

Neither the City nor the Association included comprehensive wage and benefit data for all of the cities which the City sought to include in the comparables. It thus becomes difficult to assess the overall balance of wages, hours and working conditions of Tomahawk relative to every one of these. With respect to most of them, however, the data is in the record:

Table 3.

Department	2002 - Top Pay	2002 Increase	2003- Top Pay	2003 Increase
Merrill	20.14	2% / 1%	20.75	2% / 1%
Tomahawk	18.43	3.0%	18.98	3.0%
Rhineland	18.29	3% / 2.75%	19.36	3% / 2.75%
Lincoln County	18.19	2% / 1.5%	18.74	3.0%
Medford	16.98	3.0%	17.67	3.0%
Phillips	16.42	3% / .25%	16.96	3% / .25%

The net effect of the two forms of data for which there is sufficient evidence in the record to draw any conclusion -- wages and health insurance plans -- is that Tomahawk police officers are in a relatively good wage position compared to other cities and Lincoln County, while their health insurance plan appears to be more limited, particularly in available providers, than comparable employers' plans. The evidence in the record, however, is not sufficient to draw any more dramatic conclusion, such as that implied by the Association (that because of the small number of providers, Tomahawk's plan verges on the deficient.) And it is true, as the City argues, that costs have gone up sharply in recent years:

Table 4.

Tomahawk Health Insurance Premiums						
		1999	2000	2001	2002	2003
Premiums						
single		\$ 224.58	\$ 227.60	\$261.40	\$ 373.90	\$395.20
family		\$ 566.88	\$581.90	\$651.10	\$ 932.20	\$983.70
% increase						
single			1.3%	14.8%	43.0%	5.7%
family			2.6%	11.9%	43.2%	5.5%

At the same time, however, even the sharp increase in 2002, which the City was compelled to pay all of, has not propelled Tomahawk's health insurance costs to, the top of the comparable employers' costs, as shown in Table 1 above. The regrettable fact is that Tomahawk is one among a large number of employers which have recently suffered unusually large health insurance cost

increases. These, however, are presumably reflected in the voluntary wage settlements being reached at the same time by comparable employers.

As Table 3 demonstrates, there is a significant similarity in the wage increases of most of the other employers. The largest deviations from a “three percent pattern” are in Merrill; Lincoln County, with respect to which the Association’s commentary was undisputed to the effect that the additional half percent in “lift” as a result of the split increase in 2002 was a quid pro quo for a change in deductibles and drug costs; and most obviously, Rhinelander.

The latter two examples demonstrate a principle widely accepted in cases of this type: in a nutshell, that a major change in a fringe benefit sought unilaterally by a party must be justified by a quid pro quo, unless there is some kind of extraordinary circumstance that amounts to necessity — while necessity is argued much more often than it is proven. It is conspicuous that Rhinelander has provided a very substantial additional wage increase, amounting to an additional lift of 5.5 percent in wages over two years beyond the three percent per year “going rate”, at the same time as it has introduced a very substantial employee contribution toward the health insurance premium. There is nothing in the record to rebut the Association’s argument that this was a clearly and straightforwardly bargained quid pro quo. Merrill, meanwhile, appears to have achieved a \$24 employee contribution towards family health insurance with a wage increase (in current-cost terms only) half a percent below most others in each of the two years; but I note that Merrill remains the highest paying employer among the comparables, by a significant margin.

It is notable that even after the recent change, Rhinelander continues to pay, in 2003, more than \$140 a month over what the Association’s proposal would require in Tomahawk for employees taking the family plan, and about \$20 more than the Association’s proposal for employees taking the single plan. Rhinelander is not the only employer still paying more than Tomahawk for health insurance under the Association’s final offer (see Table 1.)

Here, clearly, the City has been hit by the combination of state revenue rules and limitations and rapidly advancing health insurance costs. The unusual sharpness of the premium increase the City has suffered is conspicuous, and it is also notable that this relatively small Department pays wages that compare well with two substantially larger employers within the comparables (Lincoln County and Rhinelander.) Offsetting this to a degree is that the parties’ contract provides no employer payments beyond the absolute lowest-cost provider’s premium, within the State Plan offerings. The result is a close case, in which the City has demonstrated significant hardship and can legitimately claim some relief.

The question remains, however, whether the net effect of the City’s proposal for employee contributions is out of proportion to what other employers are seeking and getting. Under the Association’s proposal, the cost to the City for single plans is almost exactly the same as the average of the comparables in 2002 (0.6% less); for family plans, it is 8.1% above the average in 2002, and 3.3% above the average in 2003. Under the City’s proposal, the City’s cost is 5.6% below average in 2002 and 7.6% in 2003 for singles, while it is 2.7% above average for families in 2002 and 4.4% below average in 2003. Thus neither party’s proposal deviates markedly from the average of what other employers are paying. This is more to the advantage of the Association than

the City, however, because the City has the burden of proposing a major change away from the parties' history of full payment of the premium by the employer. The City is thus subject to the typical calculation of what is being done by comparable employers. And the evidence is that two employers among the three comparables which have changed health insurance in the applicable period have provided a proportionate quid pro quo, while the third obtained a much smaller employee contribution than the City seeks here, and with its employees remaining the highest-paid among the comparables by a significant margin. In Lincoln County, what appear to have been relatively modest changes (the co-pays and deductibles are sizeable, but presumably not paid by every family every year) resulted in a relatively modest quid pro quo. In Rhinelander, both sides of the equation are more dramatic. But here, the City has proposed a substantial change over two years in a major fringe benefit, while offering no quid pro quo at all. This lacks support among the external comparables. (There are no internal comparables, as this matter is the test case for the other two City bargaining units; the City's non-union employees do not constitute a significant comparable, as their benefits are by definition unilaterally controllable by the City.)

The City has thus failed to demonstrate a uniqueness of circumstance that would place it outside the customary expectation of a quid pro quo when a party seeks a major change in a fringe benefit in arbitration.

The Statutory Weighing:

The lawful authority of the employer, the stipulations of the parties and the financial ability of the City to meet the costs of the proposals are not at issue. No evidence was adduced with respect to comparisons to private employment. Comparisons to public employment for employees performing similar services favor the Association's proposal, because even though the City has endured large increases in health insurance costs and is one of only three among the comparables still paying 100 percent of employees' health insurance premiums, its overall costs for health insurance are not out of line with what comparable employers are having to pay and it has offered no quid pro quo for a large change in this key fringe benefit. There are no internal settlements to consider as comparables. The cost-of-living factor slightly favors the City, as its overall proposal cost is higher than the CPI is projected to be over both years; but only slightly, as the City's three percent wage proposal would be offset to a significant degree by the added costs employees would be required to pay under its health insurance proposal. The overall compensation factor favors the Association because the Association's proposal maintains overall compensation in the same relative position with the comparables, while the City's modifies it without the justification of any quid pro quo for a major fringe benefit change. And the "changes during the pendency of the arbitration" and other factors were not argued.

Summary

I conclude that among Tomahawk's comparables as elsewhere, only an unusual circumstance would justify a major unilateral change in a major benefit without a quid pro quo, and that while two out of three comparables to Tomahawk offered such a quid pro quo proportionate to the change each sought to make in health insurance, Tomahawk did not. Despite the sharp recent increases in the

City's cost, the City has also not been able to demonstrate that its cost for health insurance is significantly worse than other employers who are providing approximately the same wage increases. Accordingly, I find that the major adverse change to health insurance payment, in the absence of any quid pro quo, outweighs the CPI as a factor, and makes the Association's proposal slightly more reasonable than the City's in the overall balance required by the statute.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

That the final offer of the Association shall be included in the 2002-2003 collective bargaining agreement.

Dated at Madison, Wisconsin this 8th day of August, 2003

By _____
Christopher Honeyman, Arbitrator