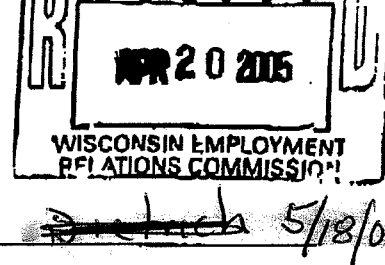


STATE OF WISCONSIN
BEFORE THE ARBITRATOR
ZEL S RICE II



In the matter of Arbitration between

Colby-Abbotsford Police Commission

and

Colby-Abbotsford Professional Police Association, WPPA/LEER

Case 8

No. 62867

MIA-2547

Dec. No. 30997-A

Appearances: Thomas W Bahr, Executive Director, for the Union
Dean R Dietrich, Attorney at Law, for the Employer

The Colby-Abbotsford Police Commission, hereinafter referred to as the Employer, filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, alleging that an impasse existed between it and the Colby-Abbotsford Police Association, hereinafter referred to as the Union, in their collective bargaining. It requested the Commission to initiate arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act. A member of the Commission staff conducted an investigation in the matter and submitted the results to the Commission.

At all times material herein the Union has been and is the exclusive collective bargaining representative with respect to wages, hours and conditions of employment of law enforcement personal.

A member of the Commission staff conducted an informal investigation that reflected that the parties were at impasse. The parties outlined their final offers on July 9, 2004. The investigator transmitted those offers along with his advice to the Commission and said investigator has closed the investigation on that basis. The parties have not established mutually agreed upon procedures for the final resolution of the disputes arising in collective

bargaining. The parties have mutually agreed that the arbitrator should have the power to determine all issues in dispute involving wages, hours and condition of employment.

The Commission certified that the conditions precedent to the initiation of compulsory final and binding arbitration of the Municipal Employment Relations Act with respect to negotiations between the Union and the Employer on issues of wages, hours and conditions of employment of law enforcement personnel employed by the Employer have been met. It ordered that arbitration be initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the parties.

Upon being advised by the parties that they had selected Zel S Rice II as the arbitrator of the dispute, the Commission issued an order appointing him as the arbitrator and directed him to issue a final and binding award to resolve the impasse by selecting either the total final offer of the Union or the total final offer of the Employer.

The Employer's final offer is attached hereto and marked Exhibit A. The Employer proposed that the benefits of the employees health insurance plan should be as currently provided except that effective January 1, 2005 the health insurance plan should include a \$250/\$750 deductible and an 80%/20% co-insurance benefit. The Employer proposed to pay 80% of the monthly premium cost for the family plan and for the single plan in accordance with marital status. Employees on approved worker's compensation or sick leave would have their health insurance paid by the Employer for a period of 18 months after commencement of time off under approved worker's compensation. The Employer also proposed revising the Article 25 regarding probationary employees by adding the following sentence to Section 1:

In the event a new employee is absent for work for thirty (30) consecutive calendar days or more the probationary period of the new employee shall be extended by the amount of consecutive days that the employee is away from work. The agreement should become effective January 1, 2004 and should remain in force until December 31, 2005. Revise addendum "A" by reflecting a 3% wage increase effective January 1, 2004 and a 4% wage increase effective January 1, 2005.

The Employer also proposed deleting the memorandum of agreement regarding the filling of the Sergeant position in the Employer's police department.

The Union submitted a final offer, attached hereto and marked Exhibit B, providing that all provisions of the 2001-2003 agreement between the parties shall not be modified by way of any previous or tentative agreements and/or by this final offer and shall be included in the successor agreement between the parties for the term of said agreement. The term of the agreement would be for the period of January 1, 2004 through December 31, 2005. All dates relating to terms shall be modified to reflect said term. The three items listed in the summary of tentative agreements agreed to by the parties shall be incorporated in to the successor agreement. The Union proposes that the 2003 rate of pay set forth in the addendum "A" of the 2001-2003 agreement be increased by 3%, effective January 1, 2004. The Union proposes that the January 2004 rate be increased by 3% effective January 1, 2005.

The Wisconsin Statutes provide that in reaching a decision the arbitrator must give weight to the lawful authority of the Employer. The Union argues that no testimony or evidence was presented by the Employer indicating that it does not have the authority to lawfully meet the Unions final offer. It contends that none of the Employer's exhibits or testimony provided any indication that any legal deficiencies exist.

The Union asserts that its final offer serves the best interest of the citizens protected by the Colby-Abbotsford Police Department by recognizing the need to maintain the morale and health of it's law enforcement officers and thereby retaining the best and most qualified officers. It asserts that these conditions consist of tangibles such as fair salary, fringe benefits, steady work and intangible benefits including morale and unit pride. The Union argues that law enforcement officers are responsible for dealing with individuals involved in issues that are not found in any other type of municipal employment. It contends that regardless of circumstance or work load, an officer must perform his or her duty with a professional demeanor and the knowledge that any action taken will be held to the utmost scrutiny by the general public and the county. The Union takes the position that the maintenance of a high level of morale is imperative to an officers well being and the Union's offer must be deemed more reasonable. The Union argues that the Employer has not,

through exhibits or testimony, provided any information that would indicate that it lacks the financial ability to meet the cost of the Unions final offer.

The Union asserts that the comparable group to which the Employer should be compared consists of Medford, Neillsville, Tomahawk, Mosinee, Spencer, Thorp, Bloomer, Ladysmith, Marshfield and Marathon County. It would only consider Marshfield and Marathon County for informational purposes. The Employer and the Union have both proposed that Medford, Neillsville, Thorp and Tomahawk make up Comparable Group A. The Employer has chosen Medford, Neillsville, Thorp and Tomahawk and proposes to include Mosinee and Spencer as comparables. The Employer also proposed Mosinee and Spencer as external comparables. The Employer provided information on Marshfield and Marathon County for informational purposes only. It does not propose that either Marshfield or Marathon County be included in the definitive external comparable pool that will guide further negotiations and arbitrations. The Employer proposes including Mosinee and Spencer in the comparable group but the Union does not agree to their inclusion. The Employer contends that Mosinee and Spencer should be included in the external comparable pool for this matter based on their geographic proximity to Colby and Abbotsford. The Employer argues that the communities of Mosinee and Spencer are both located in Marathon County as are portions of Colby and Abbotsford. It contends that Mosinee and Spencer are both geographically proximate to Colby and Abbotsford. The Employer argues that Mosinee and Spencer also complete the cluster of communities that surround Colby and Abbotsford which have been proposed by it as external comparables. The Employer takes the position that Colby and Abbotsford are part of a labor market that spans north central Wisconsin. The Employer argues that the labor market revolves round the communities of Wausau and Marshfield and many people in Colby and Abbotsford commute to one of those two large cities for work. It contends that all communities clustered around Wausau and Marshfield face similar market forces involving wages, hours and conditions of employment. The Employer takes the position that by virtue of their locations, Mosinee and Spencer as well as the rest of its proposed comparables, are part of the Wausau-Marshfield labor market. The Union argues that the commonality found by it and the Employer when determining comparability of Medford, Neillsville and Tomahawk to that of the Employer is consistent and typical of the criteria required by the statutes. Both the Employer and the

Union agree that the City of Tomahawk is an appropriate comparable even though it is 71 miles from the Employer. The Union argues that Bloomer and Ladysmith are almost the same distance from the Employer as Tomahawk. The Union agrees that Mosinee should be considered part of the comparable group by virtue of it's population and proximity. However, it disagrees with the inclusion of Thorp and Spencer. Both Spencer and Thorp are geographically close to the Employer but are approximately one-half the population and have one-third of the valuation of Colby-Abbotsford.

The arbitrator will consider Medford, Neillsville, Tomahawk, Mosinee, Spencer and Thorp as comparables. They are all in the geographic area except Tomahawk and they generally have the same type of economies. Thorp and Spencer are substantially smaller than the Employer but they fit in geographically with the group very well. Bloomer and Ladysmith are substantially the same distance from the Employer as Tomahawk but they are part of another market area and will not be included in Comparable Group A used by the arbitrator.

The primary issue in dispute between the parties is that of health insurance. The Employer's police officers already have a health insurance cost sharing in that they pay 20% of the total premium. The Union argues that Tomahawk officers are provided health insurance premium at no cost to the employee. Medford, Neillsville and Thorp officers pay 10% of the premium cost for their health insurance plan. The Union contends that the Employer has already shifted an extraordinary amount of the cost of health insurance to police officers in the form of a 20% premium contribution which amounts to a \$1,100.16 for a single plan and \$3,300.48 for a family plan. The Employer now seeks to have them assume additional liability for annual deductibles and co-insurance payments of up to \$750 for a single plan and \$2,250 for a family plan. The total liability that the Employer proposes to place on the back of the police officers for their health insurance plan totals \$1,604.88 for an officer using the single health plan and \$4,814.52 for an officer using the family plan. The Union argues that nowhere in the region are police officers asked to bear health insurance costs at that level. For their proposed changes in the health plan, the Employer suggested increasing the officers wage by a factor of 1% and asked the arbitrator to force upon employees the potential liability of premiums, deductibles and co-insurance in the additional amount of \$1,514.04 annually for a family plan. In return for that increase, the Employer would raise

the employees wage by 1% or \$478.40 per year to help offset the cost. The Union takes the position that such an extraordinary cost shift can not be viewed as necessary, equitable nor in any form reasonable when compared to the health plans of other police officers in the region.

The Union argues that the information contained in the Employers submission of it's Department of Public Works and non-represented employees as well as the level of benefits provided to non-unionized employees should not be given weight as an internal settlement plan pattern. It asserts that the information contained in those settlement plans refer to two separate and distinct employers that are both legally and practically separate and distinct from the Employer. The Abbotsford Department of Public Works is not unionized and the City of Colby Department of Public Works employees are represented by the Teamsters. The City of Abbotsford provides all it's employees health insurance through Fortis Benefits Insurance Corporation while the City of Colby obtains insurance coverage for it's employees through Security Health Plan. The Union argues that there is no commonality between any of these three employers as evidence by the fact that each of them provide different health plans with different levels of benefits for each of their respective groups of employees. It points out that an Abbotsford employee is liable for the cost of deductibles to a maximum of \$1,000 for an individual plan or \$2,000 for the family plan. A City of Colby employee has annual insurance deductibles in the amount of \$250 for a single plan and \$750 for a family plan. It argues that there is no demonstration of consistency nor pattern to these settlements that would suggest any linkage between these three separate and distinct employers. The Union argues that the amount of protection against inflation to be afforded the employees should be determined by what other comparable employers and unions have settled for and who have experienced the same inflationary ravages as those experienced by the employees of the Employer. It contends that voluntary settlements create a reasonable barometer as to the weight that the cost of living increases should be given in determining the outcome of an interest arbitration. It argues that the employees as a party to interest arbitration are entitled to no greater or less protection against the cost of living increases than are employees who entered into voluntary settlements. It takes the position that the patterns of settlements among comparable employees experiencing the same cost of living increases should be the determining factor in this dispute. It asserts that with the exception

of health insurance premium contributions the benefit level of the Employer's police officers compare to their law enforcement counterparts with various degrees of accomplishment. It asserts that no benefit elevates any member of the Union to a position giving cause to find it's final offer as unreasonable.

Included in the category of other factors are the Employers issues regarding the duration of the probationary period, deletion of the memorandum of understanding relating to positions of Sergeant and changes in health insurance. It takes the position that a well accepted premise to determine if a change in contractual language is appropriate and therefore should be changed should satisfy three tests.

1. Does the present contract language give rise to conditions that require change?
2. Does the proposed language remedy the condition?
3. Does the proposed language impose an unreasonable burden upon the other party.

The Union opposes the Employers proposal to change the definition of probation period from 12 consecutive months and exclude from that period of time an employee who is absent from work for 30 or more days. It contends that the Employer has neither through testimony nor evidence identified any condition that exist in the Employer's police department to warrant such change. It takes the position that since there has been no showing of the existence of a problem, the failure to satisfy the criteria becomes academic. The Employers final offer seeks to remove a memorandum of agreement that has existed in the parties agreement for more than 10 years. The Union points out that at the hearing the Employer's attorney explained that it does not intend to fill the Sergeant position so the agreement should be removed. The Union asserts that while this might be the inclination of the current police commission there are far reaching adverse affects upon the Union's members in the event the next elected Commission decides otherwise. The components of the labor agreement do not mandate the filling of the Sergeant position and they specifically indicate there is no such mandate upon the Commission. The Employer argues that since it does not now intend to fill the position the agreement is no longer relevant. The Union strongly disagrees. It points out that this agreement identifies with a high degree of specificity the duties the employees must fulfill and the consideration that must be given to both the position and incumbent employees in the event the position is filled. It argues that

removing such an agreement under the guise that "we are not going to fill that position anyway" is a short sighted view of the intent of the agreement and might be an attempt to evade requirements placed upon the parties in anticipation of possible events that may or may not occur in the future.

The police officers of the Employer have been contributing toward the premium cost of their health insurance for many years. The contribution of 20% to premium cost by these police officers is head and shoulders beyond that of any police department suggested as comparable by either the Employer or the Union. The Union argues that the Employer has lost sight of the fact that the current plan was already beyond the norm of other comparables by employees paying a higher cost in premium contribution. It contends that the Employer wants it both ways which makes its offer on health insurance inherently unreasonable and puts an excessive financial burden upon it's police officers. The Union takes the position that it has applied the statutory criteria set forth in Section 111.77 of the Wisconsin Statutes to the final offers presented to the arbitrator.

The Statutes provide that in reaching a decision the arbitrator must give weight to the lawful authority of the Employer. No evidence or testimony was presented by the Employer that indicates that it does not have the authority to lawfully meet the Union's final offer.

The Union points out that in considering which final offer is more reasonable the arbitrator must give weight to the interest and welfare of the public. It asserts that it's final offer serves the best interest of the community by recognizing the need to maintain the morale and health of law enforcement officers and thereby retain the best and most qualified officers. The Union argues that these conditions consist of tangibles such as a fair salary, fringe benefits and steady work as well as intangible benefits including morale and unit pride. It contends that the importance of these intangibles is significant when one realizes that law enforcement officers of one department work side by side on a dally basis with officers of other departments. The Union views the comparisons of law enforcement officers employed by the Employer to other law enforcement officers employed by police departments of similar size as the most relevant comparison made in these proceedings.

The Union argues that the Employer has not provided any information that would indicate that the Employer lacks the financial ability to meet the cost of the Union's final offer. It takes the position that the inability to pay is not a factor and should not be considered by the arbitrator.

The primary issue in dispute between the parties is that of health insurance. The Employer's police officers already have a health insurance cost sharing in an extraordinary way. They pay 20% of the total premium. The Union points out that Park Falls, Minocqua and Tomahawk officers are provided health insurance at no premium cost to the employees. It contends that Marathon County deputies contribute 5% of the premium cost to their health plan. Bloomer, Medford, Neillsville and Thorp officers pay 10% of the premium for their health insurance premium. Merrill officers pay an amount which is identified in dollar amounts as opposed to percentages is approximately 5% of premium cost. Clark County deputies and Ladysmith police officers contribute 15% of the premium for their respective family health insurance plans. The Union argues that the Employer has already shifted an extraordinary cost of health insurance to the police officers in the form of the 20% premium contribution which amounts to \$1,100.16 annually for single plan and \$3,300.48 annually for family plan and now seeks to have them assume the additional liability of annual deductibles and co-insurance payments of up to \$750 for a single plan and \$2,250 for a family plan. The Union takes the position that the total liability that the Employer is attempting to place on the backs of their police officers on an annual basis for their health insurance plan equates to \$1,604.88 for an officer using the single plan and \$4,814.15 for an officer using the family plan. It asserts that nowhere in the region are police officers asked to shoulder health insurance cost to the level that the Employer would impose upon it's police officers. The Employer asks the arbitrator to force upon the employees a potential liability for premiums, deductibles and co-insurance an additional amount of \$1,514.04 for a family plan and suggests that by it's offer to raise the employees wage by 1% or \$478.40 per year is sufficient to offset the additional cost. The Union argues that such an extraordinary cost shift can not be viewed as necessary, equitable nor in any form reasonable when compared to the health plans of other police officers in the region.

The Union argues that the internal comparables submitted by the Employer should not be considered in these proceedings. It asserts that the evidence presented by Employer refer to two separate and distinct employers, which are both legally and practically separated and distinct from the Colby-Abbotsford police commission. The City of Abbotsford supplies all it's employees health insurance through Fortis Benefits Insurance Company while the City of Colby obtains insurance coverage for it's employees through the Security Health Plan. The Union takes the position that there is no commonality between any of these three employers as evidenced by the fact that each of them provides different health plans with different levels of benefits for each of their respective group of employees. Further evidence of these differences is found in the fact that the level of benefits and participation in the cost by the employee vary greatly between the two identified health insurance plans. An Abbotsford employee is liable for the cost of deductibles to a maximum amount of \$1,000 for an individual plan or \$2,000 for the family plan. The City of Colby employee on the other hand has annual insurance deductibles of \$250 for a single plan and \$750 for a family plan. It argues that there is no pattern in these settlements that would indicate any linkage between the three separate and distinct employers. The Union argues that with the exception of health insurance premiums contributions the benefit level of employees of the Employers officers compares to their law enforcement counterparts with various degrees of accomplishment. However, no benefit elevates any member of the Union to a position giving cause to find it's final offer as unreasonable.

In the category of other factors are the Employer's issues regarding the duration of the probationary period and the deletion of the memorandum of understanding relating to the position of Sergeant and changes to health insurance. The Union takes the position that a well accepted premise to determine if a change in contractual language is appropriate and requires that the current language give rise to conditions that require change and the proposed language must remedy the condition. It asserts that the Employer has neither through testimony nor evidence identified any condition that exist to warrant such a change. It argues that since there has no showing of the existence of a problem the failure to satisfy the criteria becomes academic.

The Employers final offer seeks to remove the memorandum agreement that has existed in the parties agreement for more than 10 years. The Employer argues that it does not intend to fill the Sergeant position so the agreement should be removed. The Union asserts that while this might be the inclination of the current police commission there are far reaching adverse effects upon the Union's members in the event the next elected commission decides otherwise. It points out that the components of the agreement do not mandate the filling of the Sergeant position. They specifically indicate that there is no such mandate upon the Employer. The Union argues the agreement identifies with a high degree of specificity the duties the Employer must fulfill and the consideration that must be given to both the position and incumbent employees in the event that the position is filled. It takes the position that an attempt to remove such an agreement under the guise that it is not going to fill the position anyway, is a short sighted view of the intent of the agreement, or worse, an attempt to evade the requirements placed upon both parties in anticipation of possible events that may or may not occur in the future.

The Employer's police officers have been contributing toward the premium cost of their health insurance for many years. The contribution of 20% to premium cost by these police officers is head and shoulders beyond that of any police department suggested as a comparable by either the Employer or the Union. It asserts that the Employer has lost sight of the fact that the current plan is already beyond the norm of the other comparables by employees paying higher costs and premium contributions. The Union argues that by the Employers inability to demonstrate a need to changes sought, inadequate quid pro quo, and the financial burden upon police officers, the Employer's offer in these areas should be deemed as unreasonable and therefore the status quo must be retained.

DISCUSSION

The primary issue in dispute between the parties is that of health insurance. The Employer's police officers already have a health insurance cost sharing in an extraordinary way. They pay 20% of total premiums. Some of the comparables suggested by the Employer are providing health insurance at no premium cost to the employees. Others are provided health

insurance and their contributions total 5% or 10% of the total premiums. A few communities require their police officers to contribute 15% of the premium for their respective family health insurance. The Employer has already shifted an extraordinary share of the cost of health insurance to the police officers in the form of a 20% premium contribution which amounts to a \$1,100.16 annually for a single plan and \$3,300.48 for a family plan. The Employer now seeks to have them assume the additional liability of annual deductibles and co-insurance payments of up to \$750 for a single plan and \$2,250 for a family plan. The total liability that the Employer is attempting to place on the backs of their police officers on an annual basis for their health insurance plan equates to \$1,604.88 for an officer using the single plan and \$4,814.15 for an officer using the family plan. Nowhere in the region are police officers asked to shoulder health insurance costs to the level that the Employer would impose upon its police officers. The Employer asks the arbitrator to force upon the employees a potential liability of premium deductibles and co-insurance an additional amount of \$1,514.04 for a family plan and suggests by its offer to raise the employees wage by 1% or \$478.40 per year to offset the additional costs. This extraordinary cost shift can not be viewed as necessary, equitable nor in any form reasonable when compared to the health plans of other police officers in the region.

With the exception of health insurance premium contributions, the levels of the Employers officers benefits compare to their law enforcement counterparts with various degrees of accomplishment. However, no benefit elevates any member of the Union to a position giving cause to find its final offer as unreasonable.

In the category of other factors are the Employers issues regarding the duration of the probationary period and the deletion of the memorandum of understanding relating to the position of Sergeant and changes to health insurance. The Union argues that a well accepted premise to determine if a change in a contract language is appropriate requires that the current language give rise to conditions that require change and the proposed language must remedy the condition. The Employer has neither through testimony nor evidence identified any condition that exists to warrant such a change. Since there has been no showing of the existence of a problem the failure to satisfy the criteria becomes academic.

The Employer's final offer seeks to remove the memorandum of agreement that has existed in the parties agreement for more than 10 years. The Employer argues that it does not intend to fill the Sergeant position so the agreement should be removed. The Union asserts that while this might be the intention of the current police commission there are far reaching adverse effects upon Union members in the event that the next elected commission decides otherwise. The components of the agreement do not mandate the filling of the Sergeant position. The language specifically indicates that there is no such mandate upon the Employer. The current agreement identifies with a high degree of specificity the duties. The Employer must post the position in the event that the position is filled. The Union takes the position that an attempt to remove such an agreement under the guise that it is not going to fill the position anyway is a short sighted view of the intent of the agreement, or worse, an attempt to evade the requirements placed upon both parties in anticipation of possible events that may or may not occur in the future.

The Employers police officers have been contributing toward the premium costs of their health insurance for many years. The contribution of 20% of the premium cost by these police officers is head and shoulders beyond that of any police department suggested as a comparable by either the Employer or the Union. The Employer has lost sight of the fact that the current plan is already beyond the norm of the other comparables by employees paying high cost in premium contributions.

The statutes provide that in reaching a decision, the arbitrator must give weight to the lawful authority to the Employer. No testimony or evidence was presented by the Employer indicating that it does not have the authority to lawfully meet the Unions final offer. None of the Employer exhibits or testimony provide any indication that any legal deficiencies exist. Wisconsin statutes provide that in reaching a decision the arbitrator must give weight to the lawful authority of the Employer. No evidence or testimony was presented by the Employer that it does not have the authority to lawfully meet the Union's final offer.

The arbitrator finds the primary issue in dispute between the parties to be that of health insurance. The Employers police officers already have a health insurance cost sharing in that they pay 20% of the total premium. The Employer has already shifted an extraordinary

amount of the cost of health insurance to police officers in the form of a 20% premium contribution that amounts to \$1,100.16 for a single plan and \$3,300.48 for a family plan. The Employer now seeks to have the police officers assume additional liability for annual deductibles and co-insurance payments. The total liability that the Employer proposes to place on the back of the police officers for their health insurance plan total \$1,604.88 for an officer using the single health plan and \$4,814.52 for an officer using the family plan. Nowhere in the region are police officers asked to bear health insurance cost at that level. The proposed wage offer increase of 1% in the second year, amounts to \$478.40 per year which does not offset the increase in the employees share of the health insurance cost. A cost shift in that amount can not be viewed as necessary, equitable or in any form reasonable when compared to the health plans of other police officers in the region.

It therefore follows from the above facts and discussion thereon that the undersigned renders the following

AWARD

After full consideration of the criteria set forth in the statutes and after careful and extensive evaluation of the arguments and briefs of the parties, the arbitrator finds that the Unions final offer more closely adheres to the statutory criteria than that of the Employer and directs that the Unions proposal contained in Exhibit B incorporated into the collective bargaining agreement as a resolution of this dispute.

Date at Sparta, Wisconsin this 18th day of April, 2005


Zel S. Rice II
Arbitrator