WISCONSIN EMPLOYMENT RELATIONS COMMISSION
BEFORE ARBITRATOR WILLIAM EICH

IN THE MATTER OF: THE INTEREST ARBITRATION BETWEEN:

CITY OF STURGEON BAY

AND

STURGEON BAY PROFESSIONAL. POLICE OFFICER'S UNION, LOCAL 1658, AFSCME, AFL-CIO

DECISION & AWARD

DECISION NO. 31080-A
CASE 82
NO. 62073
MIA-2517

Appearances

For the Union: Neil Rainford, Staff Representative, AFSCME Council 40

For the City: Clifford Buelow, Esq., and William G. Bracken, Davis & Kuelthau

INTRODUCTION & SUMMARY OF DECISION

On September 20, 2004, the Commission determined that the parties, The City of Sturgeon Bay and the Sturgeon Bay Professional Police Officers Union, had reached an impasse in bargaining within the meaning of § 110l70(4)(cm)6, *Stats*. Accordingly, on November 1, 2004, the undersigned was appointed to arbitrate and resolve the impasse. Hearings were held in Sturgeon Bay on April 5, 2005. Testimony was taken, and exhibits received, and a schedule was set for the parties to exchange principal briefs by May 27, 2005. It was agreed that neither party would file a reply brief.

For the reasons that follow, and pursuant to applicable provisions of the Municipal Employment Relations Act, I adopt the final offer of The City on all disputed issues submitted for arbitration.

In so concluding, I note that it is a close case. As may be seen, internal comparable support for the City's proposal is marginal, although the proposal does find

support in the external comparables, and is favored by other, more peripheral, criteria. And while, as also may be seen below, portions of the City's offer—such as the 1% contribution increase in employee premium contributions on the last day of the contract, and the $30 Section 457 Plan contribution—might benefit from further scrutiny, Interest Arbitrators are obligated by law to select one offer—unchanged and unamended—over the other. And because, on balance, the statutory factors favor the City's offer in these other respects, I consider that offer to be preferred.

I want to note, also, that the Union's and the City's cooperation throughout the process, and their thorough and informative briefs, have been of great assistance to me in working toward resolution of this dispute. Interest arbitration can be a difficult process—an all-or-nothing result sometimes based on a tenuous or largely untested foundation—and an arbitrator can use all the help he or she can get. In large part, this was that kind of case and the help was forthcoming.

THE PARTIES' FINAL OFFERS

The dispute is fairly narrow. It focuses on the level and structure of employee contributions to the City's health insurance premium costs. Both parties agree that such contributions should be made; indeed, they jointly propose a 4% employee contribution level. The Union disputes only the City's proposal for structuring the contribution plan, and its intention to increase the contribution to 5% on the last day of the contract, December 31, 2005.

In terms of structure, the City's offer would include the employees in its Section 125 plan which, it says, will allow their contributions—and their payments for medical and dependent care expenses—to be made with pretax dollars. The City would then contribute $30 per month to a Section 457 Plan on behalf of all members of the bargaining unit, regardless of whether they are enrolled in the City's health/dental insurance program, which it says will provide additional tax benefits to the employees.

Finally, as indicated, the City would increase the 4% employee contribution to 5%, effective December 31, 2005.

The Union's Final Offer proposes that, instead of the $30 per-employee monthly City contribution to the Section 457 Plan, the City pay into the plan 65% of the premium contributions paid by employees enrolled in the City's insurance program. It's offer, of course, keeps the employee contribution level at 4% throughout the life of the agreement.

INTEREST ARBITRATION: FACTORS TO BE CONSIDERED BY THE ARBITRATOR

Interest arbitrators are required by statute to "adopt without further modification the final offer of one of the parties on all disputed issues submitted for arbitration." Section 111.70(4)(cm)6d, *Stats*. The statutory factors governing the decision—and the manner in which they are to be applied—are set forth in § 111.70(4)(cm)(7), *Stats.*:

> 7. "Factor given greatest weight." In making a decision under the arbitration procedures authorized by this paragraph, the arbitrator … shall consider and shall give the greatest weight to any state law or directive … which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer….
>
> 7g. "Factor given greater weight." In making any decision … the arbitrator … shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.
>
> 7r. "Other factors considered." In making any decision … the arbitrator … shall also give weight to the following factors:
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> 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.

e. Comparison of the 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 generally in public employment in the same community and in comparable communities.

f. Comparison of the 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 in private employment in the same community and in comparable communities.

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

h. 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.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. 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' POSITIONS SUMMARIZED

This is, as the introductory comments indicate, an "other factors" case under subsection 7r.

The Union claims that its offer is supported by both the internal and external comparables (although there is a dispute as to the make-up of the comparable lists); and it maintains that the City's "total-package" costing, and its cost-of-living evidence, is

flawed and should not be considered by the Arbitrator. It also argues that its offer should be preferred because it is the more "equitable" of the two in that it "redistributes the concessionary funds to those who made the concessions"—the Union members participating in the health insurance plan; whereas the City proposes to pay $30 per month into the Section 457 plan on behalf all members, including "non-participating" employees. Finally, the Union argues that its offer is "marginally less expensive" than the City's, and that, in any event, the City's financial health is more than adequate to support the Union's proposal. The Union also claims that "Consumer Price Index" and "total package cost" evidence is irrelevant in these proceedings.

The City says at the outset that I should decline to consider the Union's "equity" argument. It goes on to argue that its proposal is supported by both the external and internal comparables; and, additionally, that it is the more reasonable because the Union's proposal, by more-than-reimbursing employees for their premium contributions would essentially negate the bargained-for concept of having employees share the burden of the City's rising health insurance costs. It also contends that it is a "wage leader," that its offer compares favorably with the Consumer Price Index, and that the "total package costs" favor its proposal.

The parties' positions will be discussed in more detail in the body of the decision.

DISCUSSION

I. The Union's "Fairness" Arguments

The Union begins its brief by arguing that the City's offer should be rejected as "inequitable." It says that because the Police Officers have granted a substantial concession to the City—in the form of their agreement to pay 4% of the cost of their health insurance premiums—the City's offer of a $30 per month "payback" to all members of the bargaining unit (whether or not they participate in the health insurance program) "handsomely rewards … those who do not concede anything because they do

not take health and dental insurance benefits." (Brief, at 11) The Union calculates this "reward" as follows:

> Over the life of the contract the employee with single coverage gains about $650 and the employee with no insurance coverage gains about $1150 when compared with the family plan enrolled employee. This latter amount is in addition to the $120 monthly benefit … that non-covered employees already receive [under] the collective bargaining agreement. (Brief, at 11)

According to the Union, its offer—to reimburse participating employees (*via* Section 457 contributions) for 65% of the health insurance premium costs—is more equitable because it "redistributes the … funds to those who made the concession." (Brief, at 7)

The City points out that the usual *quid pro quo* for increased employee insurance contributions is an increase in wages—a benefit received by all employees, whether or not they participate in the health insurance plan (and, if they do, whether they are taking individual or family coverage). And it claims that there is nothing inequitable or unfair about such an arrangement because "it treats all employees in the bargaining unit the same—similar to the nonenrollment incentive and similar to a *quid pro quo* in the form of an addition to the wage schedule." (Brief, at 37) The City concludes:

> Under the Union's approach, only those employees that are affected by health insurance would be subject to the contribution being made to their 457 account. Contrary to the Union's argument, there is nothing inherently unfair about one employee being able to receive a family health and dental insurance benefit worth approximately $1300 per month, while the single employee receives a benefit worth approximately $600 per month. All employees should be rewarded for insurance cost sharing and those who decline coverage or take single coverage when they could do otherwise should share in the reward. (Brief, at 37)

I agree. I see neither unfairness nor inequity in either the concept, or the result, of making a monthly deposit on behalf of all employees in the unit, whether or not they participate in the city's plan. It is, as the City suggests, analogous to traditional wage-

increase trade-offs where the employer is seeking greater employee participation in a benefit plan; and I do not believe the City's offer is subject to rejection on the basis argued by the Union.[1]

The Union also argues that it is unfair and impermissible for the City to "attempt to bargain the 2006 contract in the 2003-2005 negotiations"—the result, it says, of that portion of the City's Final Offer raising the employee premium contribution from 4% to 5% on December 31, 2005, the last day of the contract. The Union says this is an "underhanded attempt to manipulate the collective bargaining process" which, if ratified, "will do considerable and far-reaching damage to the collective bargaining process state-wide by encouraging parties to load up settlements with expensive benefits or concessions on the last day of proposed agreements and then to argue that there is little or no cost to such modifications." (Brief, at 13) And it quotes form the Decision and Award in ***Dane County (Law Enforcement)***, Dec. No. 29033-A, September 19, 1997 (Oestreicher), where the arbitrator stated:

> In this instance, the Association's offer would impose two new wage steps on the Employer without negotiations. The increased cost of one new step and the cost of the December 20, 1977 wage increase for the second new step would be deferred until the nest contract period. There is no evidence about the future cost of these structural changes proposed by the Associating, in the record of this proceeding. This proposed restructuring of the salary schedule detracts from the association's offer and weighs heavily in favor of the Employer's offer. …. The Association's argument that since the cost of one of those additional salary steps will not be felt during this contract period, that unquantified cost should not be a factor in this proceeding, is not reasonable.

[1] The Union makes another "equity" argument. It maintains that its offer of a 65% Section 457 "payback" is preferred "because it provides a permanent and self-governing solution to the funds distributed to the Section 457 account in exchange for the substantial health insurance premium concession." (Brief, at 11) It says that, under its proposal, "when the premium increases or decreases, the percentage paid by the employee adjusts proportionally," whereas, the City's flat $30 monthly contribution would put the City in a "very advantageous position" if insurance premiums continue to increase above currently predicted levels—a "fact" the union itself concedes in the following sentence "is far from clear." More importantly, I have been given no reason not to believe that, should the Union desire to increase this contribution in the future, it will be free to propose such a change in the next round of negotiations. On this record, I am not persuaded by the Union's argument.

For the same reasons, says the Union, the City's offer should be rejected here.

The City states that, rather than attempting to justify a 10% employee contribution—which it says it could have, based on the external comparables—it "settled on five percent on the very last day of the contract as a way to postpone the inevitable;" and that it is "not seeking to have the union waive its right to bargain the terms of the next contract," but is simply putting forth an offer that is both "legitimate" and "clearly and convincingly supported by the external comparables."

I agree to this limited extent: As will be discussed below, the City's proposal for a 5% employee contribution finds support in the external comparables and various other criteria, if only modest support in the internal comparables; and it may well have been accepted as reasonable on its merits at the with a much earlier starting date. As a result, I do not consider this to be a situation similar to that in ***Dane County (Law Enforcement)***, *supra*, where, as Arbitrator Oestreicher indicated, there was no evidence in the record with respect to the costs of the wage increase the Association had proposed to take effect on the contract's closing day—they were wholly speculative. Here, as is discussed I more detail below, there is evidence supporting the present-day appropriateness of a five-percent employee premium contribution.

So, while I find the "delayed-effect" nature of the proposal somewhat troubling in that it does assume that the facts will justify its implementation at the appointed time, I am limited to selecting one offer over the other; and because, as succeeding sections of this Decision will demonstrate, application of the statutory factors favors the City's offer, I am not in a position to reject that offer solely because the 1% increase in premium contributions is scheduled to take effect on the last day of the contract term.

II. The Comparables

A. Composition of the Comparable Groups

Taking the external comparables first, they were litigated in a 1988 Interest Arbitration between the parties, ***City of Sturgeon Bay (Police Department)***, Dec. No. 25240-A, November 18, 1988 (Malamud). From the evidence presented, Arbitrator Malamud concluded that an appropriate comparison could be made of police wages in Sturgeon Bay to those prevailing in the following eight municipalities: Algoma, Kewaunee, Marinette, Oconto, Shawano, Two Rivers, Oconto Falls and Peshtigo.

The parties differ, however, as to the internal comparables.[2] Both agree that City Firefighters and DPW employees are relevant groups. The Union, however, would add employees of the City's Utilities Commission. The City, arguing that the Commission is a separate and distinct entity over which the City has no supervisory authority, contends it is inappropriate for consideration in these proceedings.

The Union argues that, even though the Commission is organizationally separate and distinct from Sturgeon Bay city government, there is an "extremely close collaboration between the City Common Council and the Utilities [Commission]" in that:

> Two of the seven City Common Council Members (David W. McAllister and Stephen C. Mann) also sit on the Utility Commission which governs the Utilities and which includes only five other members. Common Council member David W. McAllister, moreover, is the President of the Utilities Commission. Both McAllister and Mann also sit on the City's Board of Public Works which governs the City's Department of Public Works. Finally, the third of seven members on the Utilities Commission is Anthony R. Depies, who is the Public Works Director. In their joint positions on the City Common Council and the Utilities Board McAllister and Mann ratify the Utility, Department of Public Works, Firefighters and Police Collective Bargaining Agreements. (Brief, at 15)

The Union also asserts that the City has imposed new user fees for hydrant rental and solid waste disposal which, according to the Union, "are collected through the … Utilities

[2] Arbitrator Malamud did not consider internal comparables in his Award.

[Department];" and it says that "[t]his casts considerable doubt on the accuracy of [the City's] assertion that the City Utility operates independently and sets its own rates." (Brief, at 15-16).

The City presented evidence on the Utilities Commission's independence. Its witness, City Administrator Jay Krauss, testified, for example, that the City Council has never negotiated or approved the Collective Bargaining Agreements between the Commission and the Utilities employees, that the Utilities Commission has a "separate general manager and staff, and that Utilities policies and decisions are not reviewed by the Common Council." (Tr. 66-67). Additionally, a legal opinion from the City Attorney was received in evidence (by stipulation) indicating that while, under Wisconsin law, utility commissions such as Sturgeon Bay's are under the "general control and supervision of the governing body (*e.g.* the common council)" with respect to "the powers of the utility commission in the operation of the utilities," the law also states that the commission "shall have entire charge and management of the [utilities]." (City Exhibit 46) Additionally, it is undisputed that the Utilities Commission operations are funded by user fees, not by general City taxes. Krauss also testified that the Utilities employees are in a separate health insurance group, with different benefits, and that they are free, without City Council authorization, to purchase their own insurance. (Tr. 70)

As indicated, the Union suggests that, despite that separation—because one or more members of the Common Council are also members of the Utilities Commission (presumably by operation of state law or local ordinance), the two institutions must be considered to be so "wed" that one (the Utilities Commission) must necessarily be the agent of the other (the Sturgeon Bay Common Council). I must disagree. There was no evidence in this case that the City, either administratively or through the Common Council, has ever had, or attempted to exercise, any authority or control over the Utilities Commission's personnel practices—whether dealing with employment, labor relations, health insurance or any of the myriad other aspects of the employer/employee relationship. The City has had no input into negotiations or contract provisions pertaining to health insurance—or any labor or other employer-employee issues, for that

matter—with respect to the Utilities Commission's employees. In my opinion, these considerations, coupled with the fact that Utilities Commission operations are funded not by City taxes, but by Commission-imposed user fees,[3] renders any comparison between Sturgeon Bay police officers and the Utilities Commission's employees inappropriate in an interest arbitration. There simply is no basis for comparison.[4]

A final point needs to be considered. The Union asserts that, in a prior arbitration involving City Utilities employees, ***City of Sturgeon Bay (Utilities)***, Dec. No. 25549-B, November 3, 1989 (Vernon), the City argued that its offer to the Utilities employees was supported by wage settlements it had reached with the Firefighter and Police units—and that the arbitrator stated in the Award that the fact that the City's offer to the Utilities employees was "more consistent overall with the wage increases granted other city employees" was a "very important factor." The Union argues from this that the Utilities employees have been determined to be comparable to the Police Officers (and Firefighters) and thus are required to be considered as such in these proceedings. Again, I disagree. First, the fact that, in 1989, an arbitrator considered it appropriate to consider Police and Firefighter *wage settlements* in assessing a final *wage* offer to the Utilities employees does not, in my view, require *per se* inclusion of Utilities employees in the pool of internal comparables in evaluating a 2005 health-benefit premium-contribution offer to the Police Officers. The issue in the ***Utilities*** arbitration did not involve membership in the pool, and Arbitrator Vernon was never called upon to consider or assess the appropriateness of the "match."

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[3] As indicated, the Union suggests that, because the Utilities Commission has imposed user fees for certain services, and because these are services provided to City residents (thus displacing the need for additional taxes to fund them), there is a close enough connection to render the Utilities employees appropriate comparables in these proceedings. I disagree. To me, that connection is so tenuous—if indeed it may be considered a "connection" in any sense of the word—as to provide scant support for the Utilities employees' inclusion in the list of internal comparables.

[4] This conclusion finds support in arbitral authority. *See*, for example, ***City of Marshfield (City Employees)***, Dec. No. 30638-A, May 7, 2004 (Dichter), recognizing, as had prior arbitrators, that "public owned utilities because of their different revenue structure have not been compared with other City employees." *See*, also, ***City of Marshfield (Clerical/Technical)***, Dec. No. 50726-A, July 17, 2004 (Yaeger).

I conclude that, because of the many differences in the underlying characteristics of the two units, as well as the legal underpinnings of the two employing entitles (the Utilities Commission and the Common Council), together with the sources of funding and other distinctions I have discussed, the Utilities employees do not constitute a comparable unit for the purpose of these proceedings..

The appropriate internal comparables, then, would be the Sturgeon Bay firefighters and DPW employees.[5]

B. The Internal Comparables

It is often said, and I agree, that, when considering fringe benefits—most notably health insurance—internal comparables play a paramount role. *See*, for example, ***Rio Community School District (Educational Support Team)***, Dec. No. 30092-A, October 30, 2001 (Torosian) Here, the City presented evidence showing that its firefighters have settled on a contract containing provisions essentially identical to those in the City's final offer to the Police Officers: $32 per month contributed to a Section 457 plan; a 4% (5% in 2006) employee contribution to health insurance premiums; retaining the existing 100% COLA multiplier; and a six-month "wellness benefit."[6] The City has made essentially the same offer to the DPW employees as it has in this case; and that contract is presently in arbitration.

The City also lists its non-union administrative employees as a third "internal bargaining unit[]/group[]" for comparison purposes (City Exhibit 16), and put on evidence that those employees presently—and will in the future—pay 5% of their health insurance premium costs. No internal comparables were established in the 1988

[5] As will be discussed in greater detail below, the City would also include its administrative employees as internal comparables.

[6] The Union's brief indicates that the Firefighters' settlement also extended the "mother-in-law/father-in-law funeral leave" from one to three days. I do not consider this additional term to be so significant as to detract from the essentially identical nature of the Firefighters' and Police Officers' plans.

arbitration between these parties, because, as Arbitrator Malamud noted, the City's other bargaining units had not yet settled their agreements: "there [wa]s little identifiable data which would be of assistance in distinguishing … the [parties'] final offers; and, as a result, that factor was not considered. In proposing the non-union administrative employees as a comparable, the City offers no arbitral authority supporting placement of non-union, non-bargaining employees into a pool of internal comparables. And there is a significant difference. As Arbitrator Krinsky noted in ***Columbia County (Professionals)***, Dec. No. 28987-A, September 24, 1997: "[t]he County can make [health insurance] changes unilaterally for non-unionized employees … but it must bargain those changes for unionized employees." That is a fact of life; and it renders Sturgeon Bay's non-union administrative employees' health benefit package of questionable relevance in these proceedings. There is, I suppose, some slight relevance in that uniformity of benefits within a municipality is a factor frequently considered by arbitrators as bearing on the "comparables" analysis; but, again, I am unaware of any instance in which such relevancy has been found with respect to an unrepresented, non-bargaining group of employees. In the case cited by the City in support of its argument on the point, ***City of Appleton***, Dec. No. 30668-A, March 15, 2004, Arbitrator Torosian did, as the City suggests, indicate that "uniformity among employees City-wide is the most persuasive consideration" in an insurance-benefit-change case. However, taken in context, it is plain that he was considering only represented employees. *See*, for example, his statement—on the same page—that "The result in this case is that of the 502 *represented employees* (including this unit), 385 (or 76%) have accepted what the City is proposing to the Union in this case. Thus, there is a pattern that is commonly shared by a great majority of the employees." ***Id***., at p. 18 (Emphasis added).

Beyond that, the Union did not object when the City presented evidence of health benefits and premium contributions for the unrepresented administrative employees at the hearing.[7] Nor did it challenge either the existence or the effect of that evidence in its

[7] In his opening statement, counsel for the City discussed the City's exhibits, one of which included the administrative employees in the list of internal comparables (County Exhibit 16), another a set forth the administrative employees' compensation history (City Exhibit 26), and a third listed their historical health

brief. Under these circumstances, while I do not believe the administrative employees constitute an appropriate comparable, I do consider—on the question of uniformity of benefits—the unchallenged fact that these employees are making health insurance premium contributions of 5% to be marginally relevant to these proceedings.

It comes down to this. There are three comparable units: the Police Officers, the Firefighters and the DPW workers. The City has made the same offer to all thee, and the Firefighters have accepted it. The DPW employees and the Police Officers are in arbitration. The fact that the City's position is consistent in all three instances, and the fact that one of the units has accepted the offer—which is similar to the terms presently applicable to the City's non-union administrative employees—suggests to me that the internal comparables criterion favors the City's offer—if only marginally.[8]

C. The External Comparables

Both parties agree that the following police department units were determined to be comparable in the prior arbitration: Algoma, Kewaunee, Marinette, Oconto, Oconto Falls Peshtigo, Shawano and Two Rivers.[9] The Union argues very generally that

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insurance contributions (County Exhibit 28). (Tr. 49-51) All exhibits were received in evidence without objection.

[8] It is true, as the Union points out, that, considering just the Police Officers, Firefighters and DPW employees—a total of 51 workers—only 12 of them (the Firefighters) have accepted the City's health insurance proposal. However, there are also 22 employees in the administrative group.

[9] In its brief, the Union also discusses wage settlements concluded for Several Door County agencies: Highway, Social Services, Courthouse, EMT and Sheriff's Department. It is true that Arbitrator Malamud, in the prior arbitration, stated at one point in his Award that, of the several Counties proposed by the Union as comparables in that case, all "other than Door" should be excluded. It should be noted first that he was referring *only* to Door County deputy sheriffs. Second, what prompted the statement was Malamud's feeling that, despite the differences in duties and responsibilities of police officers and deputy sheriffs, and the elective status of the appointing authority, the Door County deputies should not be excluded because parties to police interest arbitration proceedings "ordinarily refer[] … to the salary levels of deputy sheriffs in that particular county." ***City of Sturgeon Bay (Police Department)***, Dec. No. 25240-A, November 21, 1988, at 23. In his analysis, however, Malamud considered only police departments in the eight Cities mentioned above and did not state or discuss Door County Sheriff's Department wages. ***Id***., at 25-28.

I do not consider the former arbitration as binding with respect to inclusion of the Door County Sheriff's office in the external pool for, despite his preliminary remark, no information concerning that office was ever considered by the arbitrator in arriving at his decision and formulating the award. Finally, all the

because the dispute is "narrow" in that it centers primarily on the City's response to the Union's concession (to assume 4% of the health insurance premium payments), the external comparables are not really instructive on the issue. I disagree. No authority has been put forth in support of such a proposition, and I do not believe that because the issues in a particular arbitration are narrowly focused, that fact either precludes or minimizes consideration of external comparables.

The City says first that its gross monthly family premium[10] of $1218 is significantly higher than that in the comparable municipalities. Its exhibit, however (City Exhibit 38), indicates that the differences, with two exceptions, are relatively modest:

Algoma	$1178.30[11]
Kewaunee	1178.30
Marinette	1220.77
Oconto	473.42
Oconto Falls	1029.50/1178.30[12]
Peshtigo	489.02
Shawano	944.60
Two Rivers	1382.50
STURGEON BAY	1218.00

Union states in its brief regarding the Door County Sheriff's Department is that the wage increases, despite being described as equal to the Sturgeon Bay Police increases of 3.25% in each of the applicable years, actually amounted to something more ("in excess of a 4% average") because of "all the adjustments" made in the Door County contract. That general assertion is wholly unexplained, and is accompanied only by a non-specific reference to the 21-page contract. The Door County Sheriff's Department evidence is not persuasive to any significant degree in these proceedings.

Finally, there is no basis whatsoever in the prior award to include Door County Highway, Social Services, Courthouse and EMT employees as comparables in the instant proceedings. Such discussion as occurred in that award was limited to the Sheriff's Department.

[10] The City suggests that family premiums are an appropriate comparison in that approximately 75% (13 of 18) of the Sturgeon Bay Police Officers take family coverage.

[11] Algoma and Kewaunee Counties each offer three plans—one costing $1029.50, one $1178.30 and one $2242.90. While I have used the middle figure, I do note that the lower-cost plan premium is slightly *less* than that paid by the City of Sturgeon Bay under its proposal.

[12] Oconto Falls offers two plans.

Taking the "net" premium cost to the cities (after the employee percentage contributions), the figures look like this:

Algoma (90%)	$1160.47
Kewaunee (95%)	1160.47
Marinette (95%)	1159.73
Oconto (90%)	426.08
Oconto Falls (100%/90%)	1029.50/$1160.47
Peshtigo (100%)	489.02
Shawano (90%)	850.14
Two Rivers (95%)	1313.37
STURGEON BAY (95%)	1157.10

I note also that the employee contributions for family coverage under the City's offer place near the median of the comparables—with essentially as many below as above.

Algoma (90%)	$117.83[13]
Kewaunee (95%)	58.92
Marinette (95%)	61.04
Oconto (90%)	47.34
Oconto Falls (100%/90%)[14]	-0-/117.83
Peshtigo (100%)	-0-
Shawano (90%)	94.46
Two Rivers (95%)	69.13
STURGEON BAY	65.57

Since the comparable cities—with only two exceptions—pay either 95% or 90% of their employees' health insurance premiums, the Union's proposal would have Sturgeon Bay making a grater percentage contribution than *all* the others. Under the City's offer, it would be paying the same or a larger percent of the premium than all but one county in the pool (Peshtigo). Taking the mid-level of premiums in the three

[13] As above, I have used the middle of the three contribution levels for the three plans operable in Algoma and Kewaunee Counties. In Algoma, the three levels are: $102.95, $117.83 and 224.29. In Kewaunee, they are: $51.48, $58.92, and 112.15.

[14] In one of its plans, Oconto County pays 100% of the premium; in the other, it pays 95%.

counties with multiple plans, the City's premiums are roughly 16% higher than the average of the comparables. While there may be some minor calculation discrepancies in all this, it is clear that the City's proposal is not at all out of line with similar situations in the comparables—and in fact finds significant support.

Nor is there any doubt that the City is expending large amounts of money for its employees' health care premiums, and that that expense is increasing significantly each year. In the ten-year period 1995-2005, for example, family premiums increased from $6579.00 to $14,621.64—roughly 120%. (City Exhibit 29). Dental premium expense was somewhat less—but still significant: from $701.04 to $1112—a 63% increase.[15] (Id.) Finally, the evidence shows that, under the City's proposal, Sturgeon Bay Police Department employees will be paying less—in some instances considerably less—in dollar amounts for their insurance than employees in several of the comparables.

This satisfies me that the City's offer is closer to the prevailing pattern in the relevant comparables, and that this factor favors its offer.

D. Private Sector Comparables

As indicated, one of the criteria governing interest arbitrations is a comparison of the wages, hours and conditions of employment of "other employees in private employment in the same community and in comparable communities." § 111.70(4)(cm)7r(f), *Stats*. The County offered evidence indicating that private sector employers in Sturgeon Bay are paying employee health insurance premiums in the area of $600 to $800 per month, as compared to the City's costs of $1218. (City Exhibits 38, 40) Additionally, the employees' percentage premium contributions run from 6.7% to 20%, as opposed to the 5% the City is offering to its employees. (City Exhibit 40). This factor, too, favors the City's offer.

[15] Other evidence indicates that, in the City of Sturgeon Bay, the ratio of fringe benefits to wages has been increasing—from 38% in 2000 to 48% in 2005. (County Exhibit 31) More significantly, health and dental insurance costs as a percentage of all benefits increased from 47% to 61% in the same five-year period. (Id.)

III. Other Factors

A. Wage Patterns/Cost of Living Index

The City presented evidence that its wage rates for the "Sergeant" and "Officer" positions, as an example, were either comparable to, or above, the average of the external comparables in the years 2002-2005.[16] (County Exhibit 35)

Under § 111.70(4)(cm)7r(g), *Stats*., Consumer Price Index comparisons are relevant considerations in determining the reasonableness of competing Final Offers. The Union objects to use of the CPI in this case on grounds that benefits, not wages, are the issue here, and arbitral authority is consistent in recognizing that "total package costs," including as they do non-wage benefits, are not properly analyzed in terms of the CPI. *See*, for example, ***Monona Grove School District***, Dec. No. 28339-A, October, 1995 (Kessler): ***Vernon County***, Dec. No. 26360-A, September, 1990 (Fries). In this case, however, the comparison is made only with respect to the employees' *wage* increases, and it is offered (and has been considered by the Arbitrator) only as an indication that Sturgeon Bay Police Department wage increases have kept place with (indeed exceeded the rate of) inflation in recent years. The evidence shows, for example, that the average increase for Sergeants and Officers in the years 1993-2002 was 3.9%, as compared to an increase in the Consumer Price Index in those years of only 2.7%. (County Exhibit 15).

These factors, then, favor the City's proposal.

B. Overall Compensation

[16] For the Sergeant's position, the average minimum/maximum annual wage in the comparable cities was $42,311/$42,311, and in Sturgeon Bay $46,964/S46,966. (County Exhibit 35). For the officer position the figures are: Comparables $34,521/$41,644; Sturgeon Bay $41,140/$41,126. (County Exhibit 36)

Section 111.70(4)(cm)7r(h), *Stats*., states that another factor to be considered in the analysis is the "overall compensation presently received by the .. . employees." Here, too, the Union objects, pointing to arbitral authority that "cast-forward/total package" costing, while relevant to school district/teacher contracts, is generally considered irrelevant in "general … labor relations" cases. *See*, for example, ***Wausaukee School District***, Dec. No. 29976, April 17, 2001 (Honey man). Here, however, the City is not offering any argument based on such evidence. The evidence it presented simply establishes that the wage/benefit offers it is making to Police Officers over the three-year contract period (5.9%, 5.5% and 6.4%), when compared to the Union's proposal of 5.9%, 5.4% and 6.5% for those years, represents only a minimal difference (less than $2000) between the two offers. (City Exhibit 44) No other intra-city or external comparisons are made. To me this simply is not the type of "cast forward/total package" evidence to which the Union's objection is based; it is, rather, the type of evidence contemplated by § 111.70(cm)7r(h), *Stats*., as appropriate for consideration in interest arbitrations of all types.

C. The Local Economy

The Union claims that "Sturgeon Bay's strong local economy is a factor here—one supporting either offer," citing as evidence the City's A2 bond rating, and a $550,000 growth in the City's operating fund balance in 2003, and an increase in the "unreserved fund balance" of the general fund. This is not a case, however, where meaningful amounts of evidence on the local economy were put before the Arbitrator. The isolated evidence discussed above was countered by equally limited evidence from the City that the unemployment rate in Door County compares unfavorably with those in other comparable counties.

It is unnecessary to discuss the point in detail because I do not consider there to be sufficient evidence in the record to support an informed decision on the state of the economy in Sturgeon Bay (and Door County) as it relates to the issues in this case.

IV. ***Quid Pro Quo***

The Union has taken the position throughout these proceedings that, by agreeing to a 4% health insurance premium contribution, its employees made a substantial concession—which the City's 5%/$30 payback offer neither recognizes nor matches. In other words, it says its employees received no *quid pro quo* for their concession.

In recent years, many arbitrators have come to agree that the undisputed economic impact of rising health insurance costs has reduced the employer's burden of establishing a traditional *quid pro quo* where health insurance benefits are at issue. *See*, for example, ***Village of Fox Point***, *supra*, p. 16, note 10 , where Arbitrator Petrie stated:

> [T]he spiraling costs of providing health care insurance for its current employees is a mutual problem for the Employer and the Association …. In light of the mutuality of the underlying problem, the requisite quid pro quo would normally be somewhat less than would be required to justify a traditional arms-length proposal to eliminate or modify negotiated benefits or advantageous contract language.

In another health insurance premium case, ***Pierce County(Human Services)***, Dec. 28186-A, April, 1995, Arbitrator Weisberger observed that: "where, as here, the employer has shown it is paying increased health-care costs, its burden to provide a *quid pro quo* for health-care changes is "reduced significantly." I have taken a similar position. *See*, ***Marquette County(Highway Department)***, Dec. No. 31027-A, June 24, 2005.

And, it is not only the internal comparables that will justify that lesser burden. In ***Pierce County***, No. 28186-A, April, 1995, Arbitrator Weinberger stated:

> The County's argument is particularly effective since it is made against the background of *external public sector comparability data* which generally support the County's proposal and the County's

> related argument (supported by substantial arbitral authority) that increasing health care costs paid by an employer reduce significantly or even eliminate the usual burden to provide special justifications and a quid pr quo. (Emphasis added.)

There is no question that Sturgeon Bay's employee health care benefit costs are rising rapidly and substantially. As indicated, the City has experienced a triple-digit percentage increase in insurance premium costs in the past decade alone. I have also discussed the need for increased employee contributions as evidenced by the external and private-sector (and, to a lesser degree, the internal) comparables—and by the many arbitral decisions on the point. In these circumstances, the need for a *quid pro quo* is indeed substantially reduced.

Normally, as I have also discussed above, the usual *quid pro quo* for increased employee contributions to benefit costs is a wage increase—which, of course, is taxable to the employee. In this case, the City has proposed that it make a $30 monthly payment to a Section 457 account for each employee; and it says that, to the extent a *quid pro quo* is necessary, that payment more than suffices. The Union disagrees. It has made several criticisms of the proposal—most of which have already been discussed in this decision—and it says that its own proposal for a 65% payback of premiums is preferred.

The City submitted evidence showing that, under the Union's 65% proposal, with the existing 4% contribution in effect, Police Department employees are likely to receive more income at the end of the year ($21 to $24, according to County Exhibit 10)—after making their 4% and 5% contributions in 2004 and 2005. Arbitrators have recognized that, in the area of health care benefits, responsibility for meeting the seemingly ever-increasing costs is a two-way street. I have in the past pointed out the timeliness of Arbitrator Weisberger's comments in ***Kenosha County(Jail Staff)***, Dec. No 30797-A, November 17, 2004:

> In this era of rapidly escalating health costs, which are producing a spreading crisis throughout our nation, it is not unreasonable to expect that all County employees, including members of this

> bargaining unit, will absorb some of the increases for their health care. It is also not unreasonable that the County wishes its employees to be covered by a health plan that promotes turning patients into knowledgeable and cost-conscious consumers of health care services. Whether this consumerism approach will become a significant key to controlling future health care costs is yet to be determined but steps taken in this direction hold out some promise.
>
> In light of rapidly rising costs for health care services and prescription drugs the County's effort to enlist assistance from all its employees to help control this large—and rapidly escalating—County budget item is a common route taken by many public as well as private sector employers who continue to provide the bulk of funding for these key job benefits. (Given the costs involved, it is no longer appropriate to consider this benefit a "fringe benefit.") Given the very high cost of health care … the County would be remiss if it failed to explore seriously ways to contain at least some of its rapidly rising health care expenditures.

As the City states, the Union's suggested *quid pro quo*, by actually paying more back to the employees than they pay in,[17] is antithetical to the concerns expressed by Arbitrator Weisberger (and many others) in this regard, and detracts from the Union's Final Offer.

The City's 457 Plan proposal, with its employee tax benefits, operates to lessen the effect of the employees' insurance premium contributions, both now and over time; and while, because of its "newness," the precise extent of that lessening is yet to be determined, it is nonetheless a tangible benefit—one going beyond the usual (taxable) wage trade-off for increased employee contributions to their benefit packages.[18] Another

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[17] Indeed, the City's evidence shows that, while the employees would experience a net "gain" under the Union's 65% proposal, the City's costs would be only minimally reduced. (County Exhibit 12)

[18] The Union argues that the City's estimates of tax savings to its members are overstated. It is a general argument, unsupported by any exhibits or other evidence. It is, in its entirety, as follows:

> [The City's] argument … is based on a number of highly questionable assumptions. First, the City assumes that these employees earning approximately $40,000 per year would be in the 25% tax bracket for Federal taxes excluding State and FICA taxes. This assumption is woefully inaccurate. A better assumption for the Federal non-FICA portion of such an employee's taxes would be about 15%. This percentage, moreover, is typically reduced even further

aspect of this "newness" deserves comment. The City makes the worthwhile point that, "because this is a new fringe benefit not found among comparables, the City urges the Arbitrator to move slowly in funding it." (Brief, at 34) I think that is good advice, and I believe, too, that, given the fact that the tax and other advantages inherent in the proposal redound to the employees' benefit (although, as indicated, the precise extent of that benefit over time cannot now be calculated), the $30 contribution level proposed by the City is reasonable. That level will, of course, remain subject to bargaining in future contract negotiations.

In light of the above evidence—and with particular reference to the arbitral authority recognizing the reduced need for a *quid pro quo* need in circumstances such as this—I conclude that, to the extent one is required, the City's 457 Account plan constitutes an adequate *quid pro quo* for the Union's agreement to a 4% premium contribution and the City's related proposal to increase that contribution to 5% on December 31, 2005.

V. Conclusion & Award

For the above reasons, and in consideration the applicable statutory criteria, together with the evidence, exhibits and arguments put forth by the parties, I conclude that the Final Offer of the City of Sturgeon Bay, County, Dated June 18, 2004, more

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> through the claming of multiple dependents, the use of flexible spending accounts, mortgage interest deduction, S-401k and S-457 contributions, charitable contributions to religious organizations, and the reduction of taxable income through investments and/or losses on investments. Likewise the City's assumptions regarding State tax obligation is also highly questionable for the same reasons. (Brief, at 33)

Here too, such general statements do not permit an informed consideration of the Union's claim. As much as may be said is that the Union feels the savings may not be as much as the City believes will be the case.

The Union goes on to argue that any benefits associated with the Section 125 and Section 254 Plans are creations of the Internal Revenue Code, and the City "cannot take credit for them." As a result, says the Union, those benefits should not be considered in any *quid pro quo* analysis. I disagree. To me, the issue is not who can "take credit" for the beneficial effect of a proposal, but whether the proposal in fact confers a benefit to the employee. And there appears to be no dispute that tax savings constitute such a benefit—even though the amount of that benefit is disputed.

closely adheres to the statutory criteria than that of the Union, and I therefore direct that that offer be incorporated into the parties' Collective Bargaining Agreement in resolution of this dispute.

Dated at Madison, Wisconsin, this 8th day of July 2005

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William Eich, Arbitrator