

BEFORE THE ARBITRATOR

In The Matter of the Petition of

WISCONSIN PROFESSIONAL POLICE
ASSOCIATION/LAW ENFORCEMENT
EMPLOYEE RELATIONS DIVISION

For Finding and Binding Arbitration Involving
Law Enforcement Personnel in the Employ of

CITY OF MARSHFIELD (POLICE DEPARTMENT)

Case 161
No. 64404 MIA-2648
Decision No. 31559-A

Appearances:

Mr. Thomas W. Bahr, Executive Director, Wisconsin Professional Police Association/
LEER Division, on behalf of the Association.
von Briesen & Roper, S.C., by Mr. James R. Korom, on behalf of the City.

ARBITRATION AWARD

The above-captioned parties, herein “Association” and “City,” selected the undersigned to issue a final and binding award pursuant to Section 111.77(4)(b) of the Municipal Employment Relations Act, herein “MERA.” A hearing was held in Marshfield, Wisconsin, on May 2, 2006. The hearing was not transcribed and both parties subsequently filed briefs and reply briefs which were received by July 1, 2006.

Based upon the entire record and the arguments of the parties, I issue the following Award.

BACKGROUND

The Association represents for collective bargaining purposes a unit of non-supervisory law enforcement personnel employed by the City. The parties engaged in negotiations for a

successor collective bargaining agreement to replace the prior agreement which expired on December 31, 2004, and they agreed on all issues except for health insurance and drug coverage for new employees hired on or after January 1, 2006, herein “new hires.”

The Association filed an interest arbitration petition on January 20, 2005, with the Wisconsin Employment Relations Commission, herein “WERC.” The WERC appointed William C. Houlihan to serve as investigator and to conduct an investigation and the investigation was closed on December 12, 2005. The WERC on January 24, 2006, issued an Order appointing the undersigned to serve as the arbitrator.

FINAL OFFERS

The Association’s Final Offer states:

...

The Bargaining Unit hereby presents its first final offer on all issues in dispute for a successor Agreement to commence on January 1, 2005 and remain in full force and effect through December 31, 2007:

1. All provisions of the 2004 Agreement between the parties not modified by way of any previous tentative agreements, and/or by this final offer shall be included in the successor Agreement between the parties for the term of said Agreement.
2. The term of the Agreement shall be for the period of January 1, 2005 through December 31, 2007. All dates relating to term shall be modified to reflect said term.
3. The list of Tentative Agreements dated August 8, 2005, and attached hereto shall be included in the successor Agreement between the parties for the term of said Agreement.
4. APPENDIX A – Wage Increase
 - A. The Bargaining Unit proposes that all 2004 rates of pay set forth in Appendix “A” of the 2004 Agreement for each classification be increased by the following rates:

Effective January 1, 2005: 2.30%
Effective January 1, 2006: 2.90%
Effective January 1, 2007: 2.90%

...

The City's Final Offer states:

The City submits the following items as its Final Offer:

1. Revise Article 23 (1) – Hospitalization Plan (Insurance)
The City shall offer employees hired prior to December 31, 2005 the Security Health Plan of WI, Inc. with Major Medical coverage, with a \$250 annual deductible per individual and a maximum family out-of-pocket expense of \$750. In addition, there will be a co-pay on prescription drugs utilizing a \$10 for generic/\$20 Brand Drug benefit card. The City shall offer employees hired January 1, 2006 or later the health insurance plan attached. Premium costs for either plan will be shared 85%/15% between the City and Officer respectively. (Emphasis in original)
2. Revised Appendix A- Wages (attached) to provide the following increases:
 - January 1, 2005 2.3%
 - January 1, 2006 2.9%
 - January 1, 2007 2.9%
3. Incorporate the attached Tentative Agreements into successor agreement and all other provisions not affected by the Final Offer shall remain as currently written.

...

The health insurance plan attached to the City's Final Offer states:

CURRENT PLAN DESIGN	PROPOSED PLAN DESIGN
Deductible:* \$250 per person \$750 per family	Deductible:* \$250 per person \$750 per family
Coinsurance: None – Plan pays 100% for covered services after the deductible has been satisfied.	Coinsurance: 10% of the next \$5,000 per person 10% of the next \$15,000 per family
Medical out-of-pocket maximums: \$250 per person \$750 per family	Medical out-of-pocket maximums: \$750 per person \$2,250 per family
Prescription Drugs: <ul style="list-style-type: none"> ▪ Tier I - \$10 copay ▪ Tier II & III - \$20 copay ▪ One copay per 102-day supply 	Prescription Drugs: <ul style="list-style-type: none"> ▪ Tier 1 – greater than \$10 copay or 20% of cost to a maximum of \$15/Rx ▪ Tier II – greater of \$20 copay or 30% of cost to a maximum of \$75/Rx ▪ Tier III – greater of \$40 copay or 50% of cost with no maximum ▪ Maximum out-of-pocket is \$1,250 per person or \$2,500 per family per calendar year ▪ 3 copays per 90-day supply ▪ Copays/co-insurance will be assessed on oral anti-diabetic medications.
Lifetime Maximum: Unlimited	Lifetime Maximum: \$2,000,000
Dependents: Covered from birth through the earlier of the month they marry or the calendar year in which they attain the age of 15. After age 18, the dependent must be providing less than 50% of their own support.	Dependents: Covered from birth through the earlier of the month they marry, the end of the year in which they attain the age of 19, or the end of the year in which they attain the age of 25 if they are a full-time student.

*Security Health Plan documents will reflect a \$1000 per person/\$3000 per family deductible. This will also be factored into the medical out-of-pocket maximums with/or if there is an HRA overlay in place.

STATUTORY CRITERIA

- 111.77 (6) In reaching a decision the arbitrator shall give weight to the following factors:
- (a) The lawful authority of the 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) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding 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 price for goods and services, commonly known as the cost of living.
 - (f) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
 - (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
 - (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

...

POSITIONS OF THE PARTIES

The Association contends that its Final Offer, which calls for maintaining the status quo on health insurance and prescription drug coverage for new hires, should be adopted because it is

supported by all the statutory criteria; because morale among new hires will suffer if they must pay more for such insurance; and because its offer is supported by the external comparables. It also argues that the City has the financial ability to meet the costs of the Association's offer and that the CPI supports its offer. The Association adds that there is no merit to the City's claim of "financial difficulties" and taxpayer concern; that the internal comparables do not support the City because non-represented employees only pay 10 percent towards the costs of their health care premiums rather than the 15 percent bargaining unit members must pay here; that the external comparables do not support the City because the City "will pay the lowest monthly family premium for their current plan . . ."; and because "No other officer, in comparable departments, is called upon to shoulder such a large expense."

The City asserts that its Final Offer should be adopted because the City has made serious and creative efforts to actively regulate and control City expenses for the benefit of the taxpayers of the community, and that its efforts here to control health care costs for new hires represent a reasonable part of that effort. It adds that its offer is supported by the internal comparables because about 69 non-represented employees are all "covered under the health insurance plan design proposed . . ." here, and because its other internal bargaining units "recognize that if they want to maintain the same health insurance plan that they had in the past, they must take less in wages to do so." The City also states that the external comparables support its offer because new hires here over their first four years of employment will earn about \$1,200 above the average wage rates of the external comparables, thereby helping to make up for some of the higher proposed health care costs, and that the external comparables support the City's co-insurance, drug card, and life time maximum benefits proposals.

The City also contends that it is not proposing a change from the status quo for existing employees because its proposal is only aimed at new hires and that it, in any event, has offered a quid pro quo because its wage proposal is .15% higher than the Association's initial wage offer. It also maintains that the private sector comparables support its offer; that the CPI has no applicability because of the parties' identical wage offers and because its proposal only affects new hires; that overall compensation is in its favor because the employees here enjoy an unmatched "continuity and stability of employment"; and that "its measured movement" in this area - which it hopes to replicate in its other internal bargaining units which are unsettled - "should be rewarded" and "not discouraged."

DISCUSSION

The principle differences between the current plan and the City's proposed plan for new hires center on the latter's co-insurance which would require each single participant to pay 10% of the next \$5,000 of medical expenses once the deductible has been met and each employee with family coverage to pay 10% of the next \$15,000 of medical expenses once the deductible has been met, with increased out-of-pocket medical maximums of \$750 per person and \$2,250 per family, increased co-pays for prescription drugs, raising co-pays from one per 102-day supply to three co-pays per 90-day supply, and setting the annual maximum out-of-pocket drug costs at \$1,250 per person and \$2,500 per family; the elimination of the current lifetime maximum on medical benefits; and tighter rules for dependent coverage.

In weighing the merits of each parties' Final Offer under the statutory criteria related above, I find that there is no question relating to "The lawful authority of the employer"; that the

stipulations of the parties do not favor either party; that there have not been any changes during the course of this proceeding which would affect its ultimate disposition; and that there are no “other factors” under factor 6(h) which must be considered.

I also find that the CPI does not favor either party because both parties have agreed to the identical three-year across the board wage increases and because the City’s offer would not have any impact on employees hired before January 1, 2006, who represent the overwhelming bulk of the bargaining unit.

Factor (d) 2. relating to private employment - which the City acknowledges only plays a “minor role” in this kind of proceeding - supports the City because the private sector comparables relied upon by the City, i.e., the Marshfield Clinic, Marshfield Door Systems, Company B, and Wick Building show that the drug plan proposed here is identical to the Marshfield Clinic’s and that the City’s health plan for new hires in some respects is better than some of these private sector plans (City Exhibit 17).

As for the “interests and welfare of the public,” the Association asserts that morale will be harmed if the City’s offer is selected because a new hire who is paying higher health care costs will be standing next to someone who is doing the same work but who pays much lower health care costs.

New hires may well be unhappy if the City’s offer is adopted, but that unhappiness does not rise to a level that will adversely affect the interests and welfare of the public.

As for the City’s ability to pay, the City claims that its Final Offer should be adopted because the City cannot afford to pay for ever escalating health care costs and because it in recent years has faced numerous problems which have included increased tax levies from 2000-2006; depletion of some of its fund balances; increased fuel, heating, and electrical costs; a loss

of population; and delayed spending in capital expenditures (City Exhibits 7-9). In addition, the City has frozen some positions; increased fees for certain services; restructured departments; cut down on overtime costs by going to a 12 hour work schedule; and has cut down on its insurance costs by adopting an “overlay” plan (“HRA”) which calls for higher insurance deductibles and then self-insuring the difference.

The Association answers that the City’s economic difficulties are greatly exaggerated and it points to City Administrator Mike Brehm’s admission that the City Council several years ago made the deliberate decision to maintain the same level of services without increasing the tax rate. The Association thus claims that “for the City to refuse to address the overall expenses of running the City and rely on reserve funds while reducing the mill rate ought not to allow them to now complain that they lack funds or resources to pay their expenses.”

In spite of its economic problems, I find that the City does have the ability to pay for the Association’s status quo offer because the relatively small amount in dispute - which the City states amounts to only about a \$600 per year savings to the City for each new hire (City Exhibit 29) - will not adversely affect its finances.

As for factor (f) relating to overall compensation and continuity and stability of employment, the employees herein are on the low end for some items such as sick leave and vacation (Association Exhibits 5D and E), but they work fewer hours than many of their police counterparts elsewhere and they are on the high end for items such as the wages paid to new employees for the first four years of their employment. More senior officers, however, fall behind 4 out of the 6 external public sector comparables and the City acknowledges that the City “is in the middle and not significantly behind the other municipalities.”

All this is why the City states that this factor is a “wash” because the benefit levels here are about in the middle of the comparables. I agree.

In addition, while the City states that the employees herein enjoy greater continuity and stability of employment than private sector employees, there is no evidence that the employees herein enjoy any greater continued employment and stability than their fellow municipal employees who are their primary comparables. This factor therefore does not favor either Final Offer.

Turning now to the internal comparables, none of the City’s other bargaining units have reached agreements for 2006.¹

The City, however, while recognizing that non-represented employees ordinarily are given “little weight,” argues that “some” weight must be given here because they constitute such a large number (69), and because “these leaders” have accepted changes for themselves.

The Association counters that these unrepresented employees only contribute 10% towards the cost of their health insurance premiums whereas all the employees herein, including new hires, contribute 15%. Given this disparity in premium sharing, I find that the unrepresented employees do not constitute an appropriate comparable and that the factor relating to internal comparability does not impact on either Final Offer.

Turning to the external public sector comparables, both parties agree that the cities of Stevens Point, Wausau, and Wisconsin Rapids should be included and that Portage County,

¹ The City points out that none of its other bargaining units have reached agreement for 2006 and that the decision herein will have a “watershed effect on the status of those other cases” and that I should consider the “positive effect” of a decision in the City’s favor because that will encourage collective bargaining. That cannot be done because the effects of this decision, either way, are unknown and because this case must be decided under the statutory criteria rather than what effect it will have on other bargaining units.

Marathon County, and Wood County are secondary comparables pursuant to a prior interest arbitration proceeding involving these same two parties.²

The data relating to these six external public sector comparables (Union Exhibit 7A; City Exhibit 22) show the following:

1. The employees herein pay 15% of their health insurance premiums which is the highest percentage for health care premiums among these comparables.³ Marathon County in 2006 requires a 5% employee contribution; Portage County, Wood County, Stevens Point, and Wisconsin Rapids require 10% employee contributions; and Wausau requires an 8% employee contribution.

2. The City's 2006 monthly family premium of about \$915 with HRA is lower than any of the family premiums paid among these comparables and its monthly individual premium of about \$427 with HRA is lower than five of the comparables. The City's monthly family premium of about \$1,146 without HRA is lower than any of the family premiums paid by four of the comparables and its monthly single premium of about \$496 without HRA is lower than the single premiums paid by three of the comparables and Wood County which pays less for two out of its four plans.

² See City of Marshfield (Police Department), Case 113, No. 53443, MIA-2013, Decision No. 28674-A (Zeidler, 1996). This same dichotomy between primary and secondary comparables was made in City of Marshfield, Case No. 62, No. 34487, MED/ARB-3169, Decision No. 22722-A (Imes, 1986); City of Marshfield, Case 142, No. 60285, INT/ARB-9357, Decision No. 30638-A (Dichter, 2004).

³ The percentages for out of network and non-PPO services are higher than in network and PPO services for all these comparables. I have used the latter percentages because they are the cheaper plans and thus represents the minimum contributions that must be paid.

3. The City’s Final Offer can require new hires with family coverage to pay a yearly maximum of \$2,250 in out-of-pocket medical costs which is the highest out-of-pocket family medical maximum among the six comparables, and it also can require new hires to pay \$750 for maximum out-of-pocket medical costs for individual coverage which also is higher than these six comparables.

4. The City’s proposed \$1,250 per person and \$2,250 per family maximums for out-of-pocket prescription drug co-pays will result in having higher maximums than any of these comparables. Stevens Point, Portage and Wood counties pay 100 percent after drug co-pays and/or deductibles are met; Marathon County has a maximum of \$350 for individual and \$650 for family coverage; and Wisconsin Rapids pays 80% of all drug costs after the deductible has been met in an indemnity plan and 100% in a PPO plan after co-pays are met.

5. All of the comparables have the following lower maximum lifetime medical benefits than the City which has no maximum:

<u>External Public Sector Comparables</u>	<u>Benefits Maximum Lifetime</u>
Marathon County	\$2,000,000
Portage County	\$1,500,000
Stevens Point	\$1,000,000
Wausau	\$1,000,000
Wisconsin Rapids	\$1,000,000 - \$2,000,000 depending on whether an indemnity or PPO plan is used.
Wood County	\$1,000,000 - \$2,000,000 depending on whether an indemnity or PPO plan is used.

6. But for Stevens Point which has no co-insurance, the City stands alone in not requiring employees to pay co-pays or co-insurance, as the other comparables require the following co-pays or co-insurance:

a. After deductibles, Marathon County requires 5% payment for in network services and 15% payment for out of network services unless otherwise stated in the plan documents.

b. After deductibles, Portage County pays 100% for all PPO services and pays 80 percent and 100 percent after a \$2,000 threshold for non-PPO services has been met.

c. Wausau and Wisconsin Rapids have a \$1,000 maximum for in-network services and a \$1,500 maximum for out-of-network services.

d. Wood County requires employees to pay 10% except for out of network services when they must pay 30 percent.

Based upon the above, the City has demonstrated that the external public sector comparables support its proposals to limit maximum, lifetime medical benefits which are now unlimited; to establish some form of co-insurance or co-pays which do not now exist under the current health plan; and that the comparables are evenly split over the City's proposal to have three drug co-pays for a 90-day supply. In addition, Human Resources Manager Lara Baehr testified that outside insurance companies told her they could not match the current plan's design benefits, the current plan's dependent coverage, or the current plan's vision benefits. All of this supports the need for these parts of the City's Final Offer.

But, the City's proposal also calls for a \$750 per individual and \$2,250 per family medical maximums in out-of-pocket expenses which are much higher than any of the six external public sector comparables, and it also calls for \$1,250 per individual and \$2,500 per family maximums for out-of-pocket drug pays which also are higher than any of these comparables. A

part of the City's drug proposal is thus supported by only one private sector comparable, the Marshfield Clinic which matches the City's three-tiered drug proposal (City Exhibit 17).

In addition, the employees herein are the only employees among the six external comparables who pay 15 percent of the cost of their health care premiums.

Adopting the City's Final Offer therefore may require new hires to pay more for their medical and drug benefits than any of their counterparts in these six external comparables.

If the City's current health care costs were too high when measured against these external comparables or if its total wage and benefit costs for this bargaining unit were among the highest of these external comparables, that might outweigh the disadvantages of the City's Final Offer because the City then could show that there was a greater need to bring the total costs of its wage and benefits package under greater control.

Here, though, the City acknowledges that it is "in the middle" of the pack regarding wages and benefits⁴ and, that with HRA, it pays the lowest family monthly premiums among all of the external public sector comparables and it pays lower individual monthly premiums than five of these comparables. The City over the years therefore has done a good job of controlling its health care costs, so much so that the City in many respects is better off than most of these comparables.

Its Final Offer, however, requires new hires to pay too much when measured by the external public sector comparables which I find should be given greater weight than the private sector comparables relied upon by the City. In order to be adopted, the City's Final Offer therefore should have been more modest by providing for lower out-of-pocket maximums for medical and/or prescription drug coverage.

⁴ The City's overall rollup costs in 2005 totaled 3.86 percent (City Exhibit 4).

The City correctly points out that “the overall trend in insurance benefits is to continue to move towards co-pays and deductibles.” (Emphasis in original).

As a general proposition, that is true. But here, we are not dealing with abstract generalities, but rather, with the specific facts of this case showing that the City pays the lowest premiums for its individual and family health care coverage among the six external comparables; that the employees herein pay the highest percentage for their health insurance premiums among these external comparables; and that adopting the City’s Final Offer can result in new hires paying the highest out-of-pocket medical and prescription drug costs among these comparables.⁵ Hence, the facts here must govern this case rather than an external “trend” which has application elsewhere because of different circumstances.

The City also contends that arbitrators have recently noted the need for employees to pay a bigger share of their health care premiums, as it cites the following arbitration awards which have upheld that principle: Kenosha County (Jail Workers), Dec. No. 30797-A (Weisberger, 2004), Omro School District, Dec. No. 31070-A (Petrie, 2005), and Marquette County (Highway), Dec. No. 31027-A (Eich, 2005). Arbitrator Eich stated:

...

Escalating health insurance costs are a fact of early twenty-first century life in America and, as discussed in more detail below, interest arbitrators have recognized that these trends create a need for both private- and public-sector employees to share the burden of these costs through reasonable premium

⁵ The City argues that its proposed higher health care costs will be offset by the higher wages new hires earn during their first four years of employment. The problem with this claim is that wages after four years do not measure up to the external public sector comparables, thereby reducing, if not completely eliminating, the wage edge enjoyed in the first four years of employment. Adopting the City’s Final Offer therefore would only further decrease new hires’ long-term earning power.

contributions. It is recognized, too, that, while it is yet to be known whether, or to what degree, such cooperative efforts will help curb insurance costs in the future, they are to [be] encouraged. Id. at 8-9.

...

Arbitrator Eich therefore adopted the employer's offer which called for new hires to pay 10% towards the cost of an HMO rather than the prior 5%, and to pay 20% towards cost of a standard plan versus the prior 15%.

The City points out that the employer there offered an additional ten cents an hour increase as a quid pro quo, which the City maintains should not be treated any differently than the .15% wage increase it has offered here as a quid pro quo.

Arbitrator Eich adopted the employer's offer largely because, in his words: "all other Marquette County bargaining units have settled their contracts with provisions identical to those contained in the County's final offer to the Highway Department employees." Id. at 11. That, of course, is not true here since none of the City's other bargaining units have settled, which is why his award is distinguishable.

In addition, the City's increased wage offer is too modest because it will not cover the considerable out-of-pocket medical and drug expenses that new hires may be required to pay under the City's Final Offer since: (1), the maximum out-of-pocket medical expenses for new hires with the family plan will increase from \$750 to \$2,250 and for those with single coverage it will increase from \$250 to \$750; and (2), the maximum out-of-pocket drug expenses for the family plan will be \$2,500 and \$1,250 for single coverage. The City's quid pro quo – which does not come close to these increased maximums - thus is insufficient for the major changes the City proposes.

The City also asserts that quid pro quo “analysis traditionally involves situations where the employer is trying to take something away from existing employees” which is not the case here because its “proposed change only affects new hires” who have “no status quo.”

I disagree. The status quo relates to all of the wages, hours and conditions of employment for all bargaining unit employees including newly hired employees, because the parties here have expressly bargained over what newly hired employees should earn in wages when they begin their employment, along with each and every one of the benefits they will receive and how much, if anything, they will contribute towards the costs of those benefits.

Lastly, the City asserts that “this Arbitrator should also look at this case from the point of view of the taxpayer.” Since the City represents the City’s taxpayers and acts on their behalf, I have done that by closely examining the merits of the City’s Final Offer.

Based upon all of the above, I conclude that while the other parts of the City’s Final Offer have merit, the City has not established the need for raising the medical and drug maximums to the extent sought here; that raising those maximums to such high amounts is not reasonable; that the City’s proposals relating to maximum out-of-pocket expenses is not supported by any of the six external public sector comparables; and that the City has not offered a large enough quid pro quo for the changes it seeks. On balance, I therefore conclude the Association’s Final Offer is more reasonable than the City’s Final Offer and that the Association’s Final Offer should be adopted.

It therefore is my

AWARD

That the Association's Final Offer, along with all of the tentative agreements, be incorporated into the parties' 2005-2007 agreement.

Dated at Madison, Wisconsin, this 24th day of July, 2006.

Amedeo Greco /s/

Amedeo Greco, Arbitrator