

STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

In the Matter of the Petition of  
WPPA/LEER DIVISION on behalf  
OF WAUPUN POLICE DEPARTMENT  
LOCAL 317

Case 63  
No. 65392  
MIA--2701

To Initiate Arbitration Between  
Said Petitioner and

Decision No. 31772-**A**

THE CITY OF WAUPUN

**APPEARANCES:**

WPPA/LEER by Robert E. West, Esq. on behalf of  
Waupun Police Department Local 317

von Briesen and Roper, S.C. by James R. Korom Esq.  
on behalf of the City of Waupun

ARBITRATION AWARD

Wisconsin Professional Police Association LEER division, hereinafter Association or Union, is the exclusive collective bargaining representative for all sworn law enforcement personnel employed by the Employer, excluding the Chief, the Captain, and the Lieutenants. The City of Waupun, hereinafter City or Employer, is a municipal corporation as defined by Section 111.77 Wis. Stats. The parties were unable to agree on the terms to be included in the successor to their January 1, 2004-December 31, 2005 collective bargaining agreement. On December 14, 2005, the Association filed a petition requesting the Wisconsin Employment Relations Commission to initiate compulsory and binding final arbitration pursuant to Sec. 111.77(3) of the Municipal Employment Relations Act. The Commission appointed an investigator to investigate the alleged impasse in the parties' negotiations. The investigator certified that an impasse existed by a report dated August 10, 2006. Pursuant to the Commission's order of August 17, the parties selected the undersigned to act as arbitrator. The order appointing the arbitrator was issued on October 6, 2006. After due notice to the public,

the arbitration hearing was conducted at the Waupun City Hall on January 26, 2007. Both parties presented evidence into the hearing record, which was closed at the conclusion of the hearing. Post-hearing briefs were exchanged by March 1, 2007, and reply briefs were exchanged by March 22, 2007.

#### ISSUE IN DISPUTE

There are two differences in the parties' offers for a January 1, 2006-December 31, 2007 contract. The Union requested 3% wage increases effective the first of January each year; the Employer offered 2% increases effective on January 1 and July 1 of each year. Both parties stated that difference was not a significant issue. The parties agree that the issue is the Union's insistence that the City agree to provide the members of this Unit health insurance benefits after they retire "under the normal guidelines of Wisconsin Retirement System, but no earlier than age 53, the Employee shall be allowed to remain a part of and covered by the group health plan until he/she reaches Medicare eligibility, provided that the employee makes 50% of the required premium payment..."

#### UNDISPUTED FACTS

- 1.) The City's employees include the 13 members of this bargaining unit and the members of AFSCME, Local 112, which represents City Hall employees, Library employees, Department of Public Works employees, nonsworn employees of the Police Department. There are also a number of non-represented employees and administrators.
- 2.) The City has paid the entire cost of health insurance policy premiums for all of its active employees since at least January 1, 1998. As a result of increasing health care costs, the City moved from self funding to the WPPI insurance plan in September of 2000. Premium cost increases between 2001 and 2005 caused the City to

implement some coverage changes and to change the design of coverage to increase deductibles and coinsurance limits for 2007. In spite of those cost-saving efforts the cost of family plan coverage increased from \$790 monthly in 2001 to \$1,359 in 2005. The cost for the AFSCME Unit and non-represented employees rose to \$1,570 in 2007. Since these parties have been unable to agree on a contract the cost of family coverage for this unit in 2007 is \$1,724 monthly.

- 3.) Historically the AFSCME contract provided that when a City employe retired the employe "shall be allowed to remain a part of and be covered by the group health plan, provided that the employe shall make the required premium payments in the manner and amount designated by the Employer. When the retiree dies, the retiree's spouse and eligible dependents shall be allowed to remain a part of and covered by the group plan in the same manner." The foregoing language appeared in the City's 1998-2000 contract with Local 112, AFSCME.
- 4.) The 2001-2002 Local 112 AFSCME contract changed the provision for retiree health coverage to reduce the retired employes' contribution to "50% of the required premium payment in the manner designated by the Employer." It provided that when the retiree became eligible for Medicare, the spouse and eligible dependents could benefit from COBRA by paying 50% of the policy premiums; thereafter the spouse or eligible dependents had to pay 100% of premiums. This provision remained the same through December 31, 2005.
- 5.) The 2006-2007 AFSCME contract continues the benefit described in paragraph 4 for employes hired before January 1, 2006. "Those employes hired after January 1, 2006 will need fifteen (15) years of service to be eligible for this benefit."
- 6.) The city's 2000-2001, 2002-2003, and 2004-2005 contracts with the Association each contain the language discussed in paragraph 3 above, which requires retirees to pay 100% of the policy premium after retirement.

- 7.) Wisconsin Retirement System guidelines permit police officers to retire at age 53. Data shows that in Waupun non-represented police officers retire at 55.5 on average, and Association members have retired at the age of 54.3 years. Other City employes can retire with full benefits at age 57. Data shows that the average retirement age is 62.6 years for non-protective service employes in Waupun.
- 8.) Governmental Accounting Standard Board Statement Number 45 (GASB-45) requires the City to account for its retiree medical plan on an accrual basis annually beginning in 2007. This requirement required the City to recognize the cost of retiree health care benefits which accrue during the employe's working lifetime. Because retirees' benefits continue until the employes reach Medicare entitlement age, and because police officers retire at an earlier age than other employes the greater cost of the police retiree health benefit is spread over a lesser number of years.
- 9.) The GASB-45 analysis in evidence shows that the City's total accrued "Expected Postretirement Health Benefit Obligation" (EPHBO) as of January 1, 2006 totaled \$9,034,000. Less than one half of that amount is based upon past services. The reported cost for 2006 is \$388,000 allocated \$170,000 for the Police and \$218,000 for all other Employes. The future cost of \$4,174,000 is attributable \$2,349,000 to the Police and \$1,825,000 to all other Employes.
- 10.) The City's total revenue in 2006 was \$6,588,822; total revenue in 2007 will be \$6,643,171. State-imposed levy limit increases for the two years are \$43,138 in 2006 and \$44,001 in 2007.
- 11.) External comparables Beaver Dam, Berlin, Columbus, Hartford, North Fond du Lac, Portage and Watertown generally have less attractive wage scales and annual hours of employment than Waupun. Both parties' offers for 2006 and 2007 will continue or improve this Unit's wage ratios among comparable units.

12.) Retired police officers in Columbus, Portage, and North Fond du Lac are responsible to pay 100% of the health insurance premiums after retirement. Watertown retirees are entitled to credit \$37.50 for each day of unused sick leave to the premium cost after retirement. Beaver Dam pays 25% of the premium in effect at the time the employe retires up to a period of ten years or the time of Medicare eligibility. Hartford will pay 100% of premium costs for employes who retire after 15 years of service after age 53 until the retired employe reaches age 65. Berlin retirees pay half of the premium cost until achieving Medicare eligibility.

#### THE ASSOCIATION'S POSITION

The Association reviewed the course of the negotiations leading to this impasse. It noted that, in spite of the different language regarding insurance benefits for active employes, the concepts are the same; insurance changes are not an issue. "The wage difference is a secondary issue. While the costs of the two wage offers are similar, the City's offer "will actually provide for a 2% greater lift in pay rate by the end of the agreement," it said. "Clearly the arbitration will turn on the retirement benefit.... So this brings us to the post-retirement insurance benefit proposal by the Association." The Union said that just prior to the ratification of the parties' tentative agreement on all items, it discovered that the City did not intend its personnel policy to provide post-retirement health insurance benefits provided the retirees pay one-half of premium cost to members of this unit. That policy, adopted April 12, 2005, provided the benefit to non-represented City employes. It was also incorporated into the City's 2006-2007 contract with the Local 112 AFSCME Union. "Police officers in Waupun had been under the mistaken view that when they reached retirement age (as early as 50 for protective service), they would have access to health insurance with the City paying one-half of the premium until they reached Medicare eligibility." The Union said that the document incorporating the insurance benefit into the City's Personnel Policies and Employe

Manual does not exclude organized employees. Its membership assumed that the benefit applied to all City employees until in response to a question by a bargaining unit member, the Union was informed the provision only applied to non-represented employees.

The Union anticipated that the City would attempt to justify its failure to offer the benefit to the Police because non-protective employees retire at a later date than police under the rules of the Wisconsin Retirement System. "This is true, however, the City has not even proposed a post-retirement benefit commensurate with a later retirement age." It noted that supervisory Police officers were covered by the policy, but frontline officers are denied the benefit. The Association noted the City's argument that the post-retirement benefit for Police is costly. It is "a costly benefit to have had and then lose. At least the officers thought they had it." The Association responded to the City's argument that the Union's offer was too expensive and did not include 15 years of employment requirement for eligibility. It said that "this is a minor distinction that could have easily been gained in bargaining...had it been offered" by the City. The City voluntarily extended the post-retirement benefit to Police supervisors and other organized employees. It argued that if cost was the real issue, the City could have unilaterally revoked the benefit for non-represented employees. "That has not occurred." The Police assumed that as long as the benefit remained the City's policy, the policy also applied to them. When they learned that the City intended to leave this unit as "the only group in the City of Waupun excluded from the benefit, ...the Association brought the matter to the bargaining table."

The Association stressed the importance of "internal comparables when it comes to fringe benefits." It cited a series of arbitration awards where arbitrators discussed internal comparisons. These decisions reflected that there is consensus among arbitrators that:

- 1.) Internal comparables are a persuasive factor. It is desirable to avoid disparity of benefits among employe units.
- 2.) "In the area of insurance benefits, a uniform internal pattern is particularly persuasive."
- 3.) "At the core of the issue is the concern of fairness and the impact on the morale of employees who work for the same employer but are not treated the same."

The Association concluded that the evidence supporting its internal comparability argument is so overwhelming that it alone compels finding the Union's offer is most reasonable.

The Union argued that there is no need for it to offer quid pro quo in this instance because the City "changed its interpretation of its own policy," it argued, "changing the status quo, and that the general standards of the need for a change, comparability and quid pro quo do not apply."

The Association noted the City's argument that other employees granted a concession of lower wage increases in return for the post-retirement benefit. It noted the concession amounted to 2.18% less pay than the Police received over a five-year period. It said that it had offered nearly the same savings in this proceeding where its offer contains 2% less lift than the Employer's offer.

Finally the Association argued that the City's argument that it will cost far too much to provide this benefit to Association members is questionable. The actuarial study assumed "all current officers will retire at age 50 and that insurance rates will increase based on past significant patterns." It argued that it will be difficult for the Police to pay one half the cost of health insurance and retire at age 50. "No one can truly project the future. The study represents an educated guess at best." The Association said that "no police officer will be eligible for this benefit for quite a few

years. Clearly there is enough time to add the AFSCME qualifying period and, if necessary, to make concessions consistent with other employees." It argued that if its offer is not accepted, the Union will not have any leverage to negotiate the benefit in the future. "The Employer cannot be permitted to selectively carve out Waupun Police Officers from such an important benefit."

#### THE CITY'S POSITION

After presenting a profile of the City of Waupun and its bargaining history with its two represented units, the City noted that bargaining for the parties' 2006-2007 contract began in August, 2005. The Union's initial proposal was silent regarding retirees' health benefits. The City's tentative agreement with the AFSCME unit dated November 7, 2005 restricted eligibility for retiree health benefits for employees hired after January 1, 2006 to employees with 15 years of service. The Police unit dispute was certified at an impasse on August 10, 2006. After this Union rejected a tentative agreement dated October 24, 2005. The Union's final offer dated July 31, 2006 would entitle the members of this Unit to the post-retirement benefit described in paragraph 4, Undisputed Facts, above. The City said, "This dispute involves whether this arbitrator should grant the Union's wish for a lucrative retiree health insurance package that is better than any retiree health insurance benefits received by any other represented City employe and most external comparables."

The City said that because of skyrocketing healthcare cost increases prior to 2000, the City changed healthcare design and coverage after 2000. Costs remained flat until 2002 but have risen dramatically since. The City said that it granted the AFSCME unit's request for reduced retiree health insurance contributions during the period that premium cost was stable in return for lower wage increases in AFSCME's 2001-2002 contract. It now recognizes that the agreement to trade reduced retiree premium contributions for reduced wage increases "was a terrible idea based on the significant



financial implications of his benefit." The City is attempting to limit the long-term impact of the cost by establishing the 15-year eligibility requirement in AFSCME's 2006-2007 agreement.

The City explained that prior to the adoption of the GASB accounting guidelines, which the City became aware of in March, 2006, which require the City to account for retiree retirement plans on an accrual basis after December, 2007, the City was not aware of the actual cost to the City for paying one-half of retirees' health insurance premiums. Those costs are discussed in paragraphs 8 and 9, Undisputed Facts, above.

The City argued that there are significant differences between the Union's offer and the retiree benefit provided to other employees. The 15-year eligibility requirement for new employees is the most obvious. The eligibility age for the benefit and the increased cost because of the eligibility of the benefit at the earlier retirement age have the greatest long-term financial impact. The City pointed to evidence that "carrying a Police Union retiree from age 53 through Medicare eligibility from 2007 through 2020 would cost the City as estimated \$231,063." The cost to carry any other City employee six years to age 63 totals \$57,530."

The City noted that "the goal of interest arbitration is to replicate the result which the parties would achieve through voluntary collective bargaining." It argued all levels of government have recently come under pressure to control the cost of this retiree health benefit, which has "a justifiable stigma—the cost of such benefits is expected to rise and have a significant effect on government services like no other employee benefit." It said there is no way the Union could have achieved the benefit it has requested through negotiations. The City reviewed its limited financial ability to meet all of its obligations (paragraph 10, Undisputed Facts, above), concluding that the cost of the Union's offer is beyond the City's ability to fund.

The City said that the Association had not offered an appropriate quid pro quo for the requested benefit and failed to meet the three-part test that would support the substantial change in the status quo through arbitration. "There is no compelling need for a change..., the financial impact of the Union's proposal is blatantly unreasonable...and the City has not received one dime in return." It presented arguments to support its position with regard to the Union's failure to meet the arbitral requirement for the substantial change in the status quo and cited a series of prior arbitration decisions to support its arguments.

The Employer reviewed the Statutory factors that Wis. Stats. 111.77 requires the undersigned to consider in the proceeding. It noted that the Association had chosen to "ignore every other factor which this arbitrator is required to consider" except for internal comparability. The City said, "the interests and welfare of the public and financial ability" to meet the cost of the respective offers supports its offer. "The long-term cost of the Union's final offer... dwarf the cost difference between" the two offers.

The City reviewed logistical and financial data comparing its situation and position among comparable communities and the effect of state-imposed expenditure restraints upon its ability to meet Waupun's financial obligations. Twenty-five percent of the City's residents are prisoners in the state penitentiary; those 2,687 residents don't provide tax benefit to the City. Its equalized value has not grown as rapidly as the average comparable. Equalized value in Waupun, \$47,450, is below the comparable average by \$14,000; adjusting for the prison population the shortfall is \$25,000 per capita.

The City noted that health care costs have consumed increasing amounts of budgeted revenue, up from 6.7% in 2002 to almost 9% in 2006. "Total Police Department costs city-wide consume nearly a quarter of the City's budget." Police Department benefit costs increased from 6.3% of total budget in 2002 to 7.1% in 2006.

The Department of Public Works percentage of wage and benefit costs have dropped from 14.7% of total budget in 2002 to 12.2% in 2006. The City concluded this analysis of its cost-cutting, budget-balancing effort saying its effort "minimizes the impact on the interests and welfare of the public by 'spreading the pain' to different sectors of City government. The Police Department has largely been unaffected by these cost-cutting measures."

The City noted that the Association had based its entire argument upon the internal comparable factor. It said that the Union's arguments regarding that factor are wrong. "The Union suggests they thought they already had half-paid health insurance for retirees." Their contract clearly stated otherwise. The City argued that the statutory language in 111.77(6)(d), comparing wages and benefits of "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" does not explicitly require comparison with internal non-protective bargaining units. It argued that external protective comparisons are more appropriate. It also argued that in fact the Police unit had the very same health insurance benefit as other City employees. The Police do not have the retiree benefit because their circumstances are different than other employees and they were unable to obtain the benefit through negotiation. The City said that the arbitral authority the Union cited to support its position focused on health insurance benefits for active employees.

The City reviewed data for external comparables which shows that Police in Waupun are among the most highly paid; they also work fewer hours per year than most comparables. Both offers in this proceeding would maintain those positions, with the City's wage offer being more generous. No other Police unit receives the retiree benefit the Union is requesting in this proceeding.

The City questioned the reliability and relevance of the statutory requirement to consider consumer price index data but recognized that the criteria must be considered. That being the case, it "could only favor the City's final offer in a definitive manner."

The City concluded its statutory criteria review saying those factors support the City's final offer.

### DISCUSSION

The Association's position in this proceeding appears to be predicated upon a belief that there is arbitral authority that requires an employer to provide identical or at least substantially similar non-wage benefits to all of its employees. Absent that belief it is difficult to understand why Association members believed that the amendment to the City's Personnel Policies and Employee Manual adopted April 12, 2005 extended the City's obligation to contribute one-half of retiree health insurance premiums to the members of this unit.

The records show that AFSCME Local 112 bargained to have the employer contribute one half of retirees' premium cost in its 2001-2002 contract. The benefit was granted in return for a lesser wage increase and remains in effect as modified through three subsequent contract negotiations through December 31, 2007.

The Association's 2002-2003 contract did not include any provision for police officers to continue their health insurance after retirement. It did provide that when an officer dies while in the employ of the City, the spouse and eligible dependents could maintain coverage by paying the entire premium. The parties' 2004-2005 contract added the provision that upon retirement, the employee could continue coverage upon payment of the premium. That change was made in January, 2004, years after AFSCME negotiated the reduced retiree contribution toward premium. It seems possible that the Association could have negotiated the retirement benefit or some portion thereof in January, 2004, since that was before the Employer did not know how rapidly health

insurance costs would escalate. It granted the benefit to non-represented employees in April of 2005, apparently before it recognized that because of escalating costs it was a "terrible idea."

For whatever the reason, the Association which apparently negotiated to have retiree health insurance at full premium cost in 2004, did not pursue the reduced premium contribution until after the Employer became aware of the excessive accrued long-term cost of the benefit. Some members of the Association may have mistakenly believed that they were entitled to the benefit by virtue of the April 12, 2005 personnel policy, but, that is not the case. The Union contract as a whole, and articles I and II thereof in particular, make it clear that changes in wages, hours and conditions of employment must be negotiated and included the parties' collective bargaining agreement.

The Employer, after recognizing the real cost of the benefit, began to limit its impact by imposing the 15-year eligibility requirement for AFSCME employees hired after January 1, 2006. It further stated that there is no way the City would agree to extend the benefit to the members of the Association through bargaining. The reasons the City gave for its decision --excessive cost in light of recently-acquired information and the earlier retirement age for the members of this unit--are reasonable.

The Association's expectation to receive the benefit through arbitration would have required a substantial quid pro quo. Candor requires the observation that in light of the expense of the benefit it may not be possible for the Association to identify a large enough concession to qualify as quid pro quo in future negotiations.

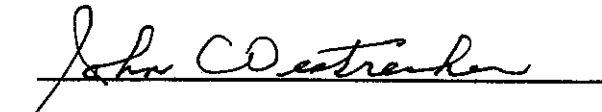
In addition to the foregoing discussion, it should be noted that the quid pro quo assessment relates to a post-retirement benefit that is not identical or even substantially the same as that provided to other City employees. The members of this unit have the right to retire at age 53. If they choose to continue working they will be insured. If they

choose to retire from the Police they will have the option of seeking other employment where health insurance is available. Those choices are not available to other City employes.

Finally it is necessary to comment on the Association's suggestion the City should have suggested adding the 15-year qualifying period to the Union offer or that the Union's offer should be selected now and the qualifying language negotiated later "if necessary." The City made it clear that it would not agree to extend post-retirement health care benefits to this unit. It was the Union's responsibility to define the terms of its offer. Arbitrators are required to select the more reasonable of the two final offers certified by the WERC investigator; the Union's offer did not contain the 15-year qualifying period.

Wis. Stats. 111.77(6) directs arbitrators to compare the parties' offers to ten statutory criteria when determining which offer is more reasonable. After doing so in the present instance the City of Waupun's offer is found to be the more reasonable. The City's offer shall be incorporated into the parties' 2006-2007 collective bargaining agreement.

Dated this 2nd day of April, 2007, at Monona, Wisconsin.

  
John C. Oestreicher, Arbitrator