STATE OF WISCONSIN
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LAW ENFORCEMENT EMPLOYEES RELATIONS DIVISION

And

Case 68
No. 67660
MIA-2816
Dec. No. 32579-A

CITY OF FRANKLIN
(Police Department)

---

Appearances:

For the Association: Richard Terry, RWT Strategies

For the Employer: James R. Koram, Esq. von Briesen & Roper

## DECISION AND AWARD

The undersigned was selected by the parties through the procedures of the Wisconsin Employment Relations Commission. A hearing was held on February 11, 2009 in Franklin, Wisconsin. The parties were given the full opportunity to present evidence and testimony. At the close of the hearing, the parties elected to file Briefs. The Arbitrator has reviewed the testimony of the witnesses at the hearing, the exhibits and the briefs of the parties in reaching his decision.

## BACKGROUND

The City of Franklin is located in Southeast Wisconsin. One of the Bargaining Units consists of the sworn officers in the Police Department. The employees in that Unit are represented by WPPA/LEER. In addition to this bargaining unit, there are five other bargaining units in the City: Dispatchers, Public Works, Fire, Clerical, and Inspectors.

The parties resolved most of the issues in their negotiations. The proposals of the Parties on the three outstanding issues are:

Wages

| | | |
|---|---|---|
| City | 3.0% increase | 1/01/07 |
| | 3.0% increase | 1/01/08 |
| | 3.25%increase | 1/01/09 |
| Association | 3.0% increase | 1/01/07 |
| | 3.0% increase | 1/01/08 |

Term

| | |
|---|---|
| City | A three-year Agreement |
| Association | A two-year Agreement |

Health Insurance

City
The Employer in the current agreement pursuant to Section 15.03 pays 75% of the cost of Health Insurance for Retirees who retire on or after January 1, 2005 with the premium capped at the January 1, 2005 rate. The Employer proposes to continue paying at the rate "plus the dollar amount active employees are contributing towards health insurance premiums on the date of retirement above the level contributed on January 1, 2005.

Association
The Union seeks to move the Retirement date and benefit calculation date to January 1, 2007.

## BACKGROUND

The Statute requires an interest arbitrator to consider several factors in rendering a decision. As is always the case, not every factor is relevant in any particular proceeding. The Arbitrator shall only address those issues that he feels are relevant here or that need explanation given the arguments of the parties.

The main issue is health insurance premiums for retirees. The Association wants the date of January 1, 2007 to be used. Whatever the premium is on January 1, 2007 the employee would pay 25% of that amount and the City would pay 75%. The retiree would pay the increase that occurred on January 1, 2008. The City wants to use the date in the current Agreement, January 1, 2005. It would pay 75% of the 2005 premium and the retiree would pay 25% plus any increases in the premium rate since January 1, 2005 with one exception. Current employees pay a set amount towards insurance. As the amount the employee pays increases, this same amount would be added to the share of the premium paid by the City. As the family premium increases from $66 to $100 that $34 difference would be paid by the City for Retiree coverage and not by the Retiree.

Although the major issue unquestionably involves the health insurance proposals affecting retirees, and most of this discussion will center around that issue the Arbitrator shall not begin with that issue. Instead, a discussion of wages and benefits of the external and internal comparables shall be the starting point, even though the proposals on wages are identical for 2007 and

2008. The discussion shall begin with these comparisons, because the Parties have argued these factors provide support for their positions on the main issue.

External Comparables

The Association proposes the inclusion of Cudahy, Greenfield, Greendale, Oak Creek, St. Francis, South Milwaukee, West Allis and West Milwaukee. The City would add Hales Corners to the list. The Association has not objected to the inclusion of that City on the list. Thus, all of those Cities including Hales Corners shall be used for this comparison.

The wage increases received by the comparables for 2007-2009 is as follows:

| City | 2007 | 2008 | 2009 |
|---|---|---|---|
| Cudahy | 2.00% | 3.00% | 3.00% |
| Greendale | 3.25% | 3.30% | 3.25% |
| Greenfield | 3.00% | 3.00% | NS |
| Hales Corners | 3.00% | 3.00% | NS |
| Oak Creek | 3.25% | 3.00% | NS |
| St. Francis | 2.90% | 3.25% | 3.25% |
| South Milwaukee | 3.00% | 3.00% | 3.00% |
| West Allis | 2/ 1% | 1.5/1.5% | 3.00% |
| West Milwaukee | 1.5/1.5% | 3.00% | 3.00% |
| | | | |
| Average | 2.79% | 2.97% | 3.05% |
| Total lift Average | 2.93% | 3.06% | 3.05% |

The City and the Association agreed upon a 3% increase in 2008 and 2009. That is slightly above the average. The City proposes a 3.25% increase in 2009. That is also slightly higher than the average, although not everyone has settled for that year. Both Parities acknowledge that this City ranks 1st among the comparables. The average wage differential increases from $1.07 to $1.196 in 2007.[1] It then decreases to $1.167 in 2008. What can be concluded from these figures is that the Agreement of the Parties on wages is in line with the wages

[1] Only the maximum Patrol wage is being used in this comparison.

paid to the external comparables for 2007 and 2008 and with the six comparables that have settled for 2009. It is, in essence, a wash.

The City also asks the Arbitrator to compare the other benefits these employees have with the benefits offered to other Cities. It points out that the Statute requires the Arbitrator to look at the total compensation of the comparables. This Arbitrator has indicated numerous times in other decisions that it is changes in benefits in other jurisdictions that are the most relevant rather than the current benefit levels. This is so because the Parties were fully cognizant of the benefit levels elsewhere when they agreed to the benefits that they did. Other than in Cudahy, there is no indication any changes took place.

Internal Comparables

There are five other bargaining units. All have received a 3% increase, although the Dispatchers, Clerical and Inspectors also were given an additional $.25 per hour in 2007. In 2008, the Dispatchers got an extra $.05 and the Public Works received an extra $.25. The Public Works and Inspectors have not settled for 2009. The Fire received 3.25% and the Dispatchers and Clerical received 3% in 2009. Like with the external comparables, the wages paid to the other Units in this City are in line with the wages for this Unit. Thus, regarding wages, this factor favors neither side.

Health Insurance[2]

It is axiomatic in Interest Arbitration that the Party proposing to change the status quo has the burden of demonstrating that the change is necessary.

[2] The Parties also disagree over the term of the Agreement. There is no compelling reason to accept one Parties proposal over the other on this issue. It is the Retiree Health Insurance question that will determine the outcome, not the length of the Agreement.

Interestingly, both Parties in this case argue that it is the other side that is seeking to make the change. Who is correct and thus who has the burden?

Position of the Association

It is the Employer that seeks to change the pattern of automatically changing the date on which premium payments are determined in each successor contract. Over the years they have always adjusted the date to conform to the date of the new agreement. The Association Exhibits give the history for Retiree Health Insurance Coverage. In the 1984 Agreement Retiree coverage was first addressed. Retirees could participate, but they were solely responsible for the cost of participation. This continued through 1988 with one adjustments being made. Sick leave could now be used to cover part of the payment. In 1989, the Employer agreed for the first time to make a payment toward retiree insurance. It paid set amounts for single and family coverage for anyone retiring on or after January 1, 1989.[3] In 1990, the City agreed to pay 75% of the January 1, 1990 rate for anyone retiring on after that date. The 1993 Agreement kept the percentage, but changed both the date for retirement and the date for determining the premium to January 1, 1993. The same thing was done in 1996. In 1998, the parties did not change the date for retirement from the 1996 date, but adjusted the rate to 75% of the 1998 premium. They did the same thing in 2000. The years were adjusted for both purposes in 2002. The retirement date and the premium rate were set as of January 1, 2002. Those same changes were made in 2005.

[3] The amount of longevity pay was reduced for employees during this same contract. The Association contends this was a quid pro quo for the change.

The above history shows that the date for determining the payment level has always been changed to reflect the start date of the new contract. It has been part of the voluntary agreement between the Parties. The "dynamic status quo" is reflected by the changes in date in the various contracts. The dynamic status quo concept has long been recognized in the State. In Kenosha County, Dec. No. 22167-B (8/86), the WERC adopted that theory. Arbitrator Fogelberg in Lake Holcolm School District, Dec. 36786 extended the theory from issues involving compensation to contract language issues. This case falls squarely in line with that case. As Arbitrator Michelstetter in North Central Community Service Program[4] noted:

> The interest arbitration process is an extension of the collective bargaining process and one of the goals of the interest arbitrator is to reach the result, which he or she believes would most likely have been the product of a voluntary settlement.

Clearly, the history shows that the Parties have always bargained an extension of the date and the Arbitrator here should likewise put the Parties in that position.

Position of the City

The Fire Department Contract must be reviewed together with the Police contract to get a clear picture. The Fire Unit added retiree health insurance in 1991. The City paid 50% of the premium in effect at the date of retirement. Whatever the rate was when the employee retired, 50% of that was paid. That is different than what was done in the Police Unit.[5] Despite the provision in the Fire Contract that automatically changed the date, the Police Unit instead

---

[4] Dec. No. 30264-A

[5] The Firefighters subsequently raised that percentage to 75%, but also increased the required years of service to 20 years. Police only need to have 15 years of service to retire.

continued to keep the date tied to the effective date of the contract with the same required years of service and did not make the Firefighters' changes.

The Employer exhibits demonstrate that Retiree Health Insurance has been a major bone of contention between the Parties in each of the negotiations. If the change were automatic as claimed by the Association; "what have the Parties been arguing about all these years?" The City certainly could not during the negotiation hiatus unilaterally change the date from that in the existing contract to a later date. To do so what violate the law. It had to use the current date because that was the status quo. In fact, an employee retired during the current hiatus and the 2005 rate was used, not a later date.

This is not the first time this type of issue has arisen. The Employer has cited cases directly on point. Those cases support the position of the City.

Discussion

The Association argues that the past contracts clearly show that a dynamic status quo has been created in this case. Arbitrator Gunderson in River Falls[6] discussed the concept:

> The WERC adopted a dynamic status quo doctrine in Kenosha County , Dec. No. 22167-B (8/86), in which the Commission stated:
>
> > 'As we have defined it, the dynamic status quo doctrine calls for an examination of the language, past practice, and bargaining history relevant to the manner in which employes have been compensated to determine what the status quo as to compensation is and whether said status quo contemplates changes in compensation during a contractual hiatus.'

[6] Dec. No. 26296

> The dynamic status quo doctrine aims to effect the parties' intent, guaranteeing that the parties' interest expectations will be fulfilled. It has been the intent of the District from day one of the initial exchange of proposals for the initial collective bargaining agreement that the District have the right to subcontract for goods and services.

After discussing this concept, Arbitrator Gunderson than had to determine whether the concept had applicability to the case before him. He concluded it did not. He noted:

> The clear and unambiguous language of the 1987-89 Agreement provided that the prohibition against subcontracting for this unit would end on July 1, 1989. Therefore, the "status quo" as contractually mandated, was the expiration on July 1, 1989, of the prohibition against the District subcontracting work. Changing the date to July 1, 1991, would change the status quo by extending the contractual prohibition against subcontracting for an additional two years. Additionally, in order to achieve such results, it would be necessary to alter the existing contract language, thereby changing the status quo…
>
> If the parties intended the prohibition against subcontracting to continue beyond the contractually specified date of July 1, 1989, the parties were capable of drafting contract language, which would have so specified. By specifying a date certain, it must be concluded the parties intended to have the prohibition against subcontracting expire on that date. The very fact the Association is proposing to change the date in the contract clearly suggests the Association knew full well the prohibition against subcontracting was scheduled to expire on July 1, 1989, as the Agreement clearly states…
>
> Based on the above, it is the opinion of the undersigned that the "status quo" in this case is to retain the existing contract language, which includes the July 1, 1989 date. By seeking to change that date, the Association is attempting to change the status quo. Once it is determined which party is seeking to change the status quo, that party has the burden of establishing the requisite basis for the change, i.e., the need for the change and an offer of a quid pro quo.

There are differences in that case and this one. Sub-contracting was prohibited until a set date. River Falls had argued that the Parties had agreed that the sub-contracting provision was "a sunset provision." The date had significance. The history there is not the history here. While the City is correct

that the Parties have always negotiated over a change in the date and that at no time did the Association obtain language like that in the Firefighter Agreement the history demonstrates that the reason for the date is totally different here than it was there. Furthermore, the long string of agreements present here was absent there. The use of a date was new. That is not so here.

The City has also cited Holmen School District[7] to support its position. Arbitrator Baron had to deal with a sub-contracting provision with a specific date. As was true in River Falls, the Employer argued that the provision was a sunset provision. The sub-contracting provision was added two years earlier in the Parties initial contract and done to help resolve a pending prohibited practice complaint. Arbitrator Baron concluded based on these facts:

> It is the Arbitrator's opinion, and it is so held, that by seeking to change the date, the Association is attempting to change the status quo. The Association, therefore, bears the burden of proving by clear and convincing evidence that a need for the change exists and that an offer of a quid pro quo has been made.

As was true with River Falls, the history present here was not present there. Thus, while these two cases aid in some ways in resolving the question, in other ways they can be distinguished.

On the other side of the coin, there is no evidence that the Parties during prior negotiations ever expressed the intent that the rate paid by retirees would automatically be tied to the Contract effective date. That is in essence what the Association argues the date means. Arbitrator Gunderson noted that in determining whether a dynamic status quo has been created, the Arbitrator

[7] Dec. No. 26164

should look at the language, past practice[8] and bargaining history. In bargaining, the City contends that the Association had to fight to obtain changes, and that in many cases, the City vigorously opposed the change and only through tough negotiations did the Association get what it wanted. The Association disputes this point and argues that rarely had there been an issue over this item. Regardless of who is correct there is merit to the statement of the City that if it was simply to be done automatically, "what is all the fuss about?" It is worth noting that in two contracts, the Association was only able to change the year for benefit purposes, but could not get the change in the effective date of retirement. That fact would seem to weigh against the dynamic status quo argument of the Association. The fact that it obtained changes in successive contracts does not ipso facto mean that those changes were inevitable. It had to bargain them.

Where then does this leave the Parties? Who is seeking to change the status quo? None of the cases are directly on point. Traditionally, determining who has the burden is of great significance when a Party is seeking to change existing language, particularly where that language has been in existence for some time. In those cases the burden is indeed a heavy one on the Party seeking change. Here, the language has changed each set of negotiations. While this Arbitrator does not find given the negotiation history that a "dynamic status quo" has been created, he also does not find that seeking to change the date as has been done in the past carries with it a burden.

[8] The Employer argues that its Exhibit 30 shows that when an instance arose where an employee retired during contract hiatus, it only agreed to move the date with a condition. A side letter was signed stating that the understanding "shall not be considered the status quo in successor negotiations." It believes this letter supports its argument. The letter, however, says it is "non-precedential." The Arbitrator shall treat it that way.

Changing the date has been part of the give and take of the bargaining process through numerous contracts. The Parties negotiate a new wage rate each contract. No one argues that because the status quo is the current rate that a quid pro quo is needed or that the wage increase proposed carries with it a burden on the Union. It is a given during negotiations that wages will be addressed, as the Law requires. Similarly, they negotiate the amount employees will pay towards health care, as they did here. Negotiations over the date used to determine the rate paid by retirees is simply another example of the typical bargaining process. The provision is not "sunsetting" any more than wages sunset. That was never the intent. The intent was to make it part of the final bargain. Consequently, this Arbitrator finds that neither side carries any greater or lesser burden than they do when it comes to any other wage or benefit proposal. This case will be decided based upon the strength of the evidence utilizing the required Statutory Criteria and the outcome will be decided based upon which way the scales tip. The discussion, therefore, now moves to an evaluation of the Statutory Criteria as they relate to the two proposals.

External Comparables

Below is a summary of the health insurance benefits for police retirees in the comparable communities:

| City | Retirement Age/ Yrs of Serv | Benefit |
|---|---|---|
| Cudahy | 53/15 | 100% lowest plan. Reduced to 85% |
| Greendale | 50/none set | 50%-70% depending on yrs of serv. |
| Greenfield | 53/10 | Same benefit as active Ees |
| Hales Corners | 53/20 | 50% family + 25% of any increases |
| Oak Creek | 53/15 | Same as active Ees. |
| St. Francis | 53/15 | 80% rate at retirement[9] |
| South Milwaukee | 53/none set | 75% of lowest plan/100% if over 60 |
| West Allis | 50/15 | 95% of premium |
| West Milwaukee | 53/15 | 60% of 105% cost of lowest plan |
| Franklin (City) | 53/15[10] | 75% as of 1/1/05 + Ee increases |
| Franklin (Association) | 53/15 | 75% as of 1/1/07 |

The retirement age in the City of Franklin is comparable to the retirement age in the other jurisdictions. Two Cities have a lower age for retirement. All of the others are in line with this City. The percentage of the total premium that it pays is higher than some and lower than others. Given the fact that some of the plans pay a percentage of the cost for only a particular type of plans, it is difficult to draw a direct comparison. It appears as though Cudahy is the only City that actually lowered the percentage during its current agreement. None of the Agreements seem to use a set date for determining the rate. It is the retirement date. The Arbitrator finds the absence of a set date in the agreements and instead, the use of the date of retirement favors the Association proposal, although it is tempered to a large degree by the fact that the premium in this City is higher than the premium in any of the comparables.

Internal Comparables

Employees in the Inspectors and Clerical units have no insurance coverage provided at retirement. 75% of the premium in effect at the time of retirement

[9] It is 50% if Ee is 50-53 years of age

[10] Many of the Agreements, including this one do not list the actual age fro retirement but tie the age to the WRS Retirement Age for Police. The Exhibits showed that age to be 53.

is paid for employees in the Fire and Public Works Department. The retirement age for the Firefighters is 53 with 20 years of service. Public Works employees can retire at age 60 with 15 years of service. The Dispatchers agreed to freeze the premium at the 2005 level for those who retire after that date. That is what is proposed to this Unit. Their date had changed throughout the years in the same manner it had changed for this Unit. Dispatchers are represented by the same Union as represents the Police. The retirement age for dispatchers is 62 with 20 years of service. Police need 15 years of service and must attain the age of 53. Like the Police Contract, coverage ceases at age 65 when the retiree is eligible for Medicare. Thus, even though the Dispatch retiree is paying more, the retiree is only paying the increased cost for three years, as opposed to the Police who could be paying for as many as 12 years. The cost to their retirees by accepting this change is considerably less than the cost to the retirees in this Unit if the City proposal were adopted.

The Units that have no health insurance benefit for its retirees have been that way for years. The other units did not give up a benefit in these negotiations that they had with the exception of the Dispatchers. The Arbitrator is extremely mindful that the Dispatchers did accept the City proposal. Failing to make the change here can have an impact on the employees in that unit. However, this disparity can be accounted for by several factors. As noted, the impact on this Unit would be far greater than it would be for Dispatchers The Dispatchers received an extra $.25 in 2007 and an extra $.05 in 2008. The Dispatchers raised the maximum out-of-pocket costs to employees to $1500/$4500 for a non-PPO. The Association here has agreed to raise those

amounts to $1600/$4800 for non-PPO. Furthermore, arbitrators have always viewed police and fire unit somewhat differently. These differences help explain the difference should the Association ultimately prevail. For these reasons, the Arbitrator finds the Internal Comparables only slightly favors the City, if at all.

Other Relevant Statutory Factors

Given the unusual nature of the rationale presented by the Parties in support of their positions, particularly by the City, it is difficult to pigeon hole the arguments into each specific Statutory Criteria. The "Interest and Welfare of the Public(c)" and "Other Factors (h)" have definite relevance. However, they are interconnected given the arguments. Therefore, though the remaining discussion will not directly reference those factors individually, they shall provide the vessel within which the remaining discussion will reside.

It is important to know at the outset the financial impact of each proposal on future retirees and on the City. Cost to Retirees and to the City clearly impacts the Interests and Welfare of the Public in how much the City pays and what impact these changes might have on their workforce. That impact is also one of those "Other Factors" to be considered.

Cost of Proposals to future Retirees

The following chart shows the premium levels from 2005 to 2009 and the amount a retiree would pay under each proposal. The first figure is for Single Coverage and the second is for Family coverage. It includes the increase in the amount active employees will pay under the Parties proposals as a set off against the increase in rates for the retirees per the City proposal. The current payment for single coverage is $26. It increases to $44 dollars in 2007 and $50

in 2008. Similarly the payment for family coverage goes from the current level of $66 to $100 in 2007 and $115 in 2008. Those differences are deducted.

| Year | Premium | City Proposal | Association Proposal |
|---|---|---|---|
| 2005 | $530/$1200 | $130/$300 | $130/$300 |
| 2006 | $600/$1380 | $210/$480 | $210/$480 |
| 2007 | $696/$1584 | $288/$650 | $174/$396 |
| 2008 | $754/$1716 | $314/$767 | $232/$538 |

Under the City proposal a retiree is paying over $100 more in 2007 and $82 more in 2008 for single coverage and over $250 more in 2007 and just under $240 more in 2008 than they would under the Association proposal. Conversely, the City would be paying the difference if the Association proposal were adopted.

The Association contends coupling these additional costs with the concessions on health care related costs already made is too much for the future retirees and the Unit to bear. It believes that by making the changes that it did it has already addressed the Employer concern over rising costs for health care. It has agreed that current employees will pay more of the premium than they did under the present contract. In addition, the maximum out-of-pocket expense for health care related costs will go for those using a PPO from $200 for single and $600 for family coverage to $400/$1200. Using a non-PPO, it agreed to increase the amount from $800/$2400 to $1600/$4800. The co-pay for generic drugs goes from $5 to $10 and from $15 to $20 for "brand name formulary drugs." It is $30 for non-formulary drugs. This is new. The Association argues that: "The bargaining unit members have already paid for the right to keep their long-standing post-retirement benefit."

There is merit to the above argument. Clearly, theses changes were designed to help keep down the costs of health insurance. There is no indication as to what savings might be realized by these changes, but there must be some. The City is self-insured. Less money is needed to pay for these services than is currently being paid because employees who use the services will be paying more. Those savings must be considered. The City is asking employees to make these changes, which will be made no matter which proposal is adopted and to also absorb greater costs for the retirees than they have experienced in the past. These points definitely puts weight on the Associations side of the scale, but is it enough weight to keep the scale tipped in its favor?

The major thrust of the City's argument and the bulk of its brief deals with the implication of new accounting rules for governmental entities embodied in GASB 45. It believes this argument clearly tips the scales in its favor.

GASB 45

The City's rationale for freezing the rate at the 2005 level is GASB 45. As the Employer notes in its brief, GASB 45 "introduces to public sector entities the requirement to calculate, record and report their costs associated with OPEB (Other Post Employment Benefits)." It is a standard that was created by the Government Account Standards Board (GASB). The Board sets the accounting standards for Governmental Entities. GASB 45 is one of those standards. The Report in describing the need for the standards notes: "most governments do not report information needed to assess the long term financial implication of OPERB transactions, including the actuarial accrued obligation related to

service to date and the potential demands on future costs." The Report than discusses health insurance and caps and provides in paragraphs 116 and 117:

> The Board therefore decided to add as a specific requirement that a legal or contractual cap on the employer's share of the benefits to be provided to retirees and the beneficiaries each period should be taken into consideration when projecting benefits to be provided by the employer in future periods, if the cap is assumed to be effective.
>
> Second, the Board stipulated that the employer benefit cap should be deemed to be effective. That is, a judgment is required to be made based on consideration of all relevant factors and circumstances, and particularly the employer's previous pattern of behavior in maintaining the cap, that the cap is likely to be enforced at the existing level on an ongoing basis in the future.

The Employer argues that these last paragraphs compel it to account for and precisely determine the present value of these future retiree insurance costs, and the amount per year needed to fund those future costs. That is known as the ARC, which is the Employer's "Annual Required Contribution." Initially, the Employer calculated the ARC for this contract at $197,919. It later revised that estimate downward to $188,337. These figures are based on a freeze for retirees at the 2005 level. If the date were moved to January 1, 2007 per the Association proposal the ARC would be $230,423. It is must be noted that this figure is derived from City Exhibit 22, which also lists the ARC under the City proposal as the original $197,919 amount. It can be assumed the ARC under the Association proposal would also correspondingly decrease based on the new calculations.

GASB 45 while not mandated by Law is nonetheless of importance and a consideration in evaluating the proposals. This Arbitrator is not the first arbitrator to be faced with the advent of GASB 45. The City has cited several

Wisconsin Interest Arbitrations where the rule was addressed. In Racine Water Works Utility[11], Arbitrator Honeyman discussed GASB 45 at great lengths:

> Against this, the Employer offers essentially a relatively sophisticated financial argument, whose underlying significance is all too easy to overlook. The Employer's best point, in essence, is that a failure to make any provision for remedying a situation which has gotten seriously out of balance renders the Utility vulnerable to external pressures, whether in the form of privatization, higher interest on bonds, or some form of 'unknown,' while good management requires planning and avoidance of such to the extent possible. The Employer's argument that GASB 45 is inevitable and that it will place the 'long tail' liability created by the retiree insurance provision in a stark and highly public light stands without rebuttal by the union. . . The degree to which GASB 45's disclosure of 'long tail' financial liability will drive up financing costs and undermine the Employer's financial viability is, admittedly, speculative. But the recent sad history of some major and formerly rock-solid private companies, at least partly for reasons related to their obligations to retired employees, suggests that the Employer's concerns are not mere fantasy.

He then went on to apply the Rule to the facts before him:

> The union objects that in a final offer targeted to the problem of retiree health costs, the Employer should have made some provision that was responsive to retirees future health needs, by offering some kind of alternate coverage. This deserves a direct answer. I find that the fact that the Employer has provided a substantial quid pro quo, in a form which individual employees can very easily turn into their own choice of future-oriented substitute, is actually a powerful argument in favor of the Employer's final offer. Here, a full 1.5% of the proposed wage boost is directly attributable to the quid pro quo element. Ignoring for the moment the "windfall" aspect of this to current employees who are not subject to the capped benefits, the reality is that any future employee who is concerned about availability of a retirement health supplement, over and above Medicare, is free to put 1-1/2% of wages into an IRA or similar account to grow tax deferred toward that objective.

The City believes this last paragraph has applicability here. It notes that the wages in this City are the highest among the comparables. The exhibits show that the City is $1.43 over the average. The City argues this puts more money

[11] Dec. No. 31232

in the pockets of current employees just like was true in Racine Water. It is this argument that compels the Arbitrator to look back to the prior discussion on the wages paid by the external comparables. The Arbitrator noted that the 3% wage increase was not higher than the wage increases paid in the comparable Cities. There is no 1.5% boost or "windfall" here. 3% is in line with that of the others. If the City is to prevail it will have to do so without the benefit of the additional monies that were offered in Racine Water that helped influence Arbitrator Honeyman to reach the outcome he did.

Another case cited by the City is City of Wisconsin Rapids[12]. Arbitrator Krinsky also had to address the introduction of GASB 45. He stated:

> The City acknowledges that it has not yet had an actuarial study of these obligations. . . . The Association argues that this issue is not entitled to significant weight at this time, given that the City has not yet studied and accurately identified the extent of its unfunded liability. . . . It is the arbitrator's view that the City is correct that under present and anticipated circumstances, the public interest is better served by moderation of its future financial obligations, and that this outweighs any negative effects on the morale of the bargaining unit. In this regard, it should be noted that what the City is proposing is a capping of present contributions to retiree health insurance, not elimination of the benefit.

He then added:

> The arbitrator understands the City's concerns about the future, given the financial obligations which it will likely face once GASB 45 is in place. However, at the present time there has been no actuarial analysis, and the dollar figures which the City will have to pay towards unfunded liabilities during the life of the proposed agreement, if any, have not yet been identified. GASB 45 does not require the City to have such an analysis until 2008, the second year of the Agreement. Whether and how the City will be able to meet its resulting financial obligations during the life of the Agreement remains to be seen. Clearly, this is a matter, which will not go away. The City will need to address it with the Association and the other unions with which the City bargains if the City's dire predictions

[12] Dec. No 32073

> about its financial difficulties in the future prove to be accurate. They either will reach agreement in the next round of bargaining or take steps to begin to address the issue, or they will again end up in arbitration, but by that time many of today's unanswered questions about the City's financial obligations and when they will have to be paid will have been answered.

Obviously, unlike that case, there is a study here and GASB 45 is already in effect. To further make its point, the City also cited Wisconisn Indianhead VTAE.[13] Arbitrator Grenig ruling for the Employer found there were changed circumstances caused by the ever-escalating health care costs. He noted:

> The record does not justify postponing resolution until after the next round of bargaining. The parties had a reasonable opportunity to bargain a solution during the present negotiations. The record shows that the Union rejected the Employer's proposal without even making a counterproposal. The Parties thereafter agreed they were at impasse. While a voluntary agreement is certainly preferable, the parties did not resolve the matter during negotiations. The matter has now been submitted to the Arbitrator for resolution.

The City believes these additional two cases demonstrate that under the facts of this case, this Arbitrator should adopt its proposal.[14]

It is correct that some of the factors present in those cases are present here. However, as has already been noted, there are also some differences. Arbitrator Grenig had, as the City noted in its brief, two, not one, actuarial studies completed at the time he heard the case. No counterproposal was offered. The Union as discussed earlier did not offer a counter regarding retirees, but did offer and agree to changes in employee health care costs, which impact both

---

[13] Dec. No. 32469

[14] Arbitrator Bratslaw in Oneida County, Dec. No. 32365 also addressed GASB and recognized its importance. The trouble was he found "considerable variance between the actuarial assumptions used to construct the cost estimate, and the actuarial experience" of the County. Arbitrator Greco in City of Cudahy, Dec. No. 31376, also noted the importance of GASB and the impact it could have on that City. Despite that finding, he found in favor of the Union because he felt the City was trying to take back too much too fast. It wanted a wage freeze together with the change in retiree payments.

retirees and employees. There is no indication those types of changes were made there.

The Association also correctly points out that the figures used to calculate the cost of future retirement benefits is based by necessity on various assumptions. The interest rate earned on the money set aside for this purpose fluctuates. If it goes up, fewer funds need be added. If it goes down, more funds are needed. As the actuarial report notes on page 8:

> To select assumptions to be used in the valuation, a number of factors are considered. These factors included the level of benefits provided by the plan, the age at which these benefits become available, recent experience of the group, experience of employees in the WRS, the insights and observations of the administration, and the actuary's best estimate of the likelihood of certain events, given experience with other plans under similar circumstances.
>
> It was not possible to develop reasonable assumptions based on the experience of the City due to its size. To obtain more reliable experience other sources were used.

Thus, while the City attempted to give its best estimate of costs, it is only an estimate. Variations as noted by the Association caused by such as decisions not filling vacancies as has occurred in the past, will mean lower future costs than originally estimated. The fact that GASB 45 has only recently taken effect means that there has been little time to determine whether those estimates comport to reality and what variation there might be. It also has yet to account for the financial savings from the other health insurance cost reductions discussed earlier. There simply has not been enough time to evaluate the accuracy of the predictions and to make adjustments as required.

## Conclusion

The Arbitrator finds that even though it is without doubt in the interest of the public to adhere to the fundamentals of GASB 45, the totality of the circumstances do not justify accepting the Employer proposal at this juncture. Unlike, Arbitrator Grenig, this Arbitrator finds the record justifies "postponing resolution of the problem" at this time. While this case certainly does not rise to the level of that of Arbitrator Bratslaw in Oneida County, the Arbitrator is uncomfortable accepting the figures asserted with so little history to back them up, especially given the changes already made regarding health care. The Parties will know in the future what savings were gained by those changes and how those savings impact its OPEB. While this is a close call and the scales are not tipping at a great angle, the Arbitrator finds that they do tip slightly towards the Association. In so finding, it is important to reiterate the words of Arbitrator Krinsky:

> Clearly, this is a matter, which will not go away. The City will need to address it with the Association and the other unions with which the City bargains if the City's dire predictions about its financial difficulties in the future prove to be accurate. They either will reach agreement in the next round of bargaining or take steps to begin to address the issue, or they will again end up in arbitration…

In those future negotiations, the Parties will have additional history to help validate or adjust the assumptions that were initially used. In reaching this conclusion, it should be emphasized that this Arbitrator is only dealing with 2007 and 2008. The City's in its exhibits calculated the ARC beyond 2008 to show how constantly moving the date each contract would increase costs.[15]

[15] According to the City exhibits, the total ARC through 2012 would be $427,416 if every two years the date were moved as it had been done in the past.

Whether that comes to pass depends upon the future bargaining of the Parties. Unquestionably, GASB 45 will impact the outcome in those negotiations either through voluntary agreement or subsequent arbitration proceedings.

## AWARD

The proposal of the Association together with the tentative agreements shall be adopted as the Agreement of the Parties.

Dated: May 20, 2009

_____
Fredric R. Dichter,
Arbitrator