State of Wisconsin
Wisconsin Employment Relations Commission
Arbitration

In the Matter of the Interest Arbitration
between

LABOR ASSOCIATION OF WISCONSIN, INC.

and

VILLAGE OF HARTLAND

Case 7
No. 36166
MIA-1054
Arbitration Award
Decision No. 23829-A

Introduction

An impasse occurred in collective bargaining between the Village of Hartland (hereafter Village) and the Village of Hartland Professional Police Association, Local 301 of the Labor Association of Wisconsin, Inc. (hereafter Association). The Association petitioned the Wisconsin Employment Relations Commission (WERC) on December 12, 1985 for final and binding arbitrationn pursuant to Section 111.77(3) Wisconsin Statutes. An informal investigation was conducted resulting in a recommendation that the WERC issue an order requiring arbitration. On July 16, 1986 the WERC issued such an order and, at the parties request, provided a panel of arbitrators from which the parties selected Arlen Christenson of Madison, Wisconsin to arbitrate. An order making the appointment of the arbitrator to resolve the dispute by the selection of one or the other of the final offers of the parties was issued on July 30, 1986. An arbitration hearing was conducted on September 19, 1986 in the Village of Hartland at which the parties had full oppportunity to present evidence and argument. A court reporter was present and a transcript of the hearing was prepared. Post hearing briefs were filed by December 5, 1986 and reply briefs by December 24, 1986.

Final Offers

The Association's final offer is:

Proposal #1:
The 1984/85 collective bargaining agreement will carry on as drafted except for the amendments ageed to and submitted to
. to the arbitrator as Association Exhibit #1.

Proposal #2:
Article V - Wages and Compensation: Effective 1/01/86 all steps will be increased by 3.5%. Effective 1/01/87 the top and bottom step will be increased by 3.5% across the board.

Proposal #3:
Article VII - Hospitilization, Dental and Surgical Care Insurance paragraph A. Delete the current language in Paragraph A and replace with the following:

"The Village shall continue to provide a traditional insurance program and pay the full premium for single and family rates.

The Village may, from time to time, change the insurance carrier, HMO or self fund health care benefits it it elects to do so, provided the coverage afforded the employees is equal to or greater than the existing coverage being replaced. The Village shall notify the Association in writing at least thirty (30) days prior to any change in the carrier. The Village shall also provide the Association with a list of benefits through the new carrier, if requested to do so."

The final offer by the Village is:

1. WAGES:

4% 1/1/86
4%* 1/1/87

*Top and Bottom Steps increased; Intermediate Steps equalized as stipulated (Vill.9)

2. HEALTH INSURANCE Revise first paragraph of Section A to read as follows:

A. Hospitalization, Dental and Surgical Care Insurance:

The Employer agrees to pay up to $195.00 per month toward the family and $74.00 toward the single premium toward an HMO plan as chosen by the Village. The Employer also agrees to provide the option of a traditional health insurance plan, if available. However, the employee choosing such traditional plan shall pay the difference between the HMO family rate and the traditional family rate, if they choose the family plan, and the difference between the HMO single rate and the traditional single rate if they choose the single plan. The dollar amount shown above will reflect the actual premium cost. For 1986-87, increases in the HMO rate will be paid by the Employer.

(The implementation date of this plan shall be February 1, 1986)

3. All tentative agreements as attached.

4. All other items status quo.

Current Contract Language

ARTICLE VII HOSPITALIZATION, DENTAL & SURGICAL CARE INSURANCE

A. The Village shall provide coverage by Blue Cross and Surgical Care Blue Shield Political Subdivision Benefits contract for county and municipal employees, and the Village shall pay the monthly premiums for each employee of the Police Department, and the employee's family in the case of married employees.

The Village may from time to time change the insurance carrier or self-fund health care benefits if it elects to do so provided the coverage afforded employees is equivalent or comparable. The Village shall notify the Association in writing at least thirty (30) days prior to any change in carrier.

Statutory Criteria

Section 111.77(6) Wis. Stat. provides as follows:

(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 employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes 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 employes, including direct wage compensation, vacation, holidays and excused time, insurance and pension, 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 sector or in private employment.

Discussion

This dispute presents an unusual situation. The wage offer by the Association on behalf of the employes is lower than that of the Village. The final offer submitted by the Village provides for a wage increase of 4% in each of the two years of the collective bargaining agreement while that of the Association is for 3.5% in each year. The reason for this peculiar state of affairs is that the Village proposes to change the health insurance program provided for in the agreement by substituting a fully paid Health Maintenance Organization (HMO) program for the fully paid "traditional" program in effect under the old agreement. Employees wishing to continue under the traditional plan must pay the difference between the HMO premium and the premium for the traditional plan. The principle difference between the HMO and the traditional plan, of course, is that the traditional plan pays for medical care by the physician of the employee's choice while the HMO plan requires the use of physicians associated with the HMO. The parties have stipulated that the benefit level under the HMO plan is equivalent or comparable to the existing plan. The Association, however, places a high enough priority on retaining full payment of the traditional program that its final offer includes the lower wage increase in an effort to keep it.

The immediate financial impact of the Village's final offer is more favorable to the employee s than the Association's, even if they choose to retain traditional plan insurance coverage and pay the difference in premium. Or, to put the same proposition in the opposite terms, the Village's final offer will, if it is adopted, require the Village to pay slightly more for wages and fringe benefits during the two year period than would the Association's offer. Over that period employees who choose the traditional plan will net from $94.37 to $263.17 more in wages under the Village's offer. The difference is not terribly significant in percentage terms, however, ranging from about 3/10 of 1% to 9/10 of 1% of the employee's total annual salary. (Calculations based on Employer's Exhibit 33) Nevertheless, the short range economic consequences are just the opposite of what would ordinarily be expected in conflicting final offers. This is because both the Village and the Association are more interested in the longer range consequences of their respective approaches. The Village views the move to an insurance system based on the cost of HMO coverage as an important cost containment measure. The Association sees the movement away from full payment of the

premium for traditional coverage as shifting a financial risk to the employees which they are not willing to accept.

The choice between final offers must be made by applying the criteria in Section 111.77(6) Wis. Stat. The principle criterion argued by the parties is the comparison of the offers with terms and conditions of employment of similar employees in comparable communities and with those of other employees of the village. In making these arguments the parties have chosen to rely on a different set of comparable communities. They are agreed that Chenequa, Delafield, Menomonee Falls, Oconomowoc, Pewaukee and Waukesha County should be relied upon. The Village, however, adds Germantown, Muskego and the City of Waukesha while the Association proposes to include Brookfield, Elm Grove, Butler and the Town of Oconomowoc. The Village argues that its set of comparables is appropriate because it has been used in bargaining historically. The Association would accept the addition of Germantown as an appropriate comparable but contends that Muskego is not sufficiently geographically proximate and Waukesha too large and urban. In respect to this arbitration, however, the dispute over the appropriate comparables is much ado about nothing. No matter which set is used, or if the comparables are all used, the conclusion is that the Village's wage offer is slightly below the average of the comparables and the Associations is about a half a percent or a little more low. In the matter of health insurance the majority of the comparables pay 100% of the cost of a traditionanl health plan with some variation in the other plans offered. One of the exceptions to this is Muskego where the collective bargaining agreement contains a provision almost identical to that proposed by the Village. Two others, Pewaukee and Waukesha County, provide for some cost sharing by the employees.

The Village also argues that the internal comparables support its position. The collective bargaining agreement with Village Public Works employees contains the same language regarding medical coverage as that in the Village's final offer. That agreement, like the Village's final offer, also provides for an 8% wage increase over the two year period. The same insurance terms were also extended to the non-represented employee's of the Village. The Association argues that the voluntary agreement by one bargaining unit is not precedent for imposing an agreement on another. The general view, however, is that the statutory comparability criterion requires arbitrators to consider internal comparables whether they are the result of voluntary agreements or not. The rationale is that internal consistency enhances bargaining and promotes labor peace.

Both the Village and the Association contend that the offer by the other contains a substantial change in terms and conditions of employment which should only be implemented upon agreement of the parties and not imposed as a part of an arbitration award. The Association points out that the Village's offer departs from the present contractual provision that the Village will pay the full cost of traditional medical coverage. The Association's final offer, on the other hand, contains a change in language limiting the ability of the Village to change insurance carriers. The current provision is that the Village can change carriers so long as the coverage is "equivalent or comparable." The Association's offer requires that the coverage be "equal to or greater." Both argue from these facts that the selection of the other's offer will be a significant change in the status quo of the sort that should only come as a result of bargaining and not in an arbitration award. Both, in my view, overstate the principle involved. It is in the nature of interest arbitration that the parties have failed to agree, and any agreement will be the result of outside imposition. To say that arbitrators should not include anything new in an imposed solution because the parties have not agreed to it is unduly restrictive. It is more appropriate to state the principle that the proponent of the new provision must carry the burden of persuasion that the offer containing it should, under the statutory criteria, be adopted.

It is clear, in any event, that both final offers contain new language not negotiated by the parties. The Association's new language is a potentially more restrictive limitation on changing insurance carriers. It could, under some circumstances, impose additional cost burdens on the Village. Its purpose, though not explained by the Association, appears to be to insure that the Village cannot change to an HMO or anything other than the traditional plan now in effect without Association agreement. The Village's final offer changes the status quo with respect to fully paid medical coverage. HMO coverage will be fully paid. Employee s may retain the traditional plan but will be required to pay $5.21 a month for single coverage and $14.03 a month for family coverage during the term of the contract. In both cases the proponent of the change must be able to carry a burden of persuasion that, under the statutory criteria, its proposed change should be adopted.

There are eight sub-paragraphs in Section 111.77(6) listing the statutory criteria. However no argument has been made with respect to the lawful authority of the employer, the stipulations of the parties, the financial ability to pay, or the cost of living. None of these factors is relevant to a resolution of this dispute. As outlined above, the parties have argued both internal and external comparables, the interests and welfare of the public, the overall compensation received, and the principle, probably incorporated in sub-paragraph (h), that arbitrators should be reluctant to impose new contract terms. In addition the Association argued in its brief that changes in circumstances during the pendency of the proceedings should be taken into account. On the motion of the Village, however, I have previously communicated my decision that the events cited were not a part of the record and not appropriately taken into account in reaching a decision.

The issue boils down to whether, considering the total compensation package, internal and external comparables, the interests and welfare of the public and other factors normally taken into account in collective bargaining, the final offer of the Village or the Association is preferrable. I conclude that the application of these criteria compels the selection of the Village's final offer. Neither offer fares better than the other in the light of external comparables. The Village's wage offer compares better than the Association's. However, more of the comparable communities, regardless of which comparable list is included, more closely match the Association's offer with respect to payment of insurance premiums. On the other hand, as the Village argues, the trend is to introduce some form of cost controls on rapidly escalating health insurance costs and several bargaining units have moved in that direction. The Village's offer compares better when internal comparables are considered. The only other bargaining unit in the Village has agreed to the Village's proposed modification of the insurance program. It is also in effect for non-represented employees.

Both parties argue strenuously that the other's offer departs from the status quo and should be rejected for that reason. Both offers, in some respect, do. The Village's offer departs from the present language to base the full payment of insurance premiums on the cost of the HMO, requiring employee's to pick up a portion of the cost of the standard plan. The Association's language would make it more difficult for the Village to modify the insurance program by requiring that the program be shown to be "equal or better" rather than "equivalent or comparable." The Village's modification may be more substantial although the particular features of the HMO it proposes mitigate the change. It is stipulated that the benefit level is equivalent to the traditional plan now in effect. Both parties also argue that they have provided a quid pro quo for the change they propose. The Village contends that its wage offer is larger than it otherwise would be to compensate for the additional cost to those who wish to maintain traditional insurance. The Association points to its low wage increase proposal as its quid pro quo for its language on insurance. Again both arguments appear to have substantial bases.

In the end the choice between offers is an extremely close question. The Village carries the burden of persuasion on the basis of the internal comparables and the trend toward cost containment measures with respect to health insurance. The Association has vividly emphasized the importance of full payment of traditional plan costs to the members of the bargaining unit. On balance, however, the Village's offer is, under the statutory criteria, to be preferred.

Award

The Village's final offer is selected and shall be incorporated into and made a part of the collective bargaining agreement between the parties.

Dated at Madison, Wisconsin this 14th day of January, 1987.

Arlen Christenson, Arbitrator