EDWARD B. KRINSKY, ARBITRATOR

In the Matter of the Petition of CITY OF RICE LAKE (POLICE DEPARTMENT) For Final and Binding Arbitration Involving Law Enforcement Personnel in the Employ of RICE LAKE PROFESSIONAL POLICEMAN'S ASSOCIATION	Case 36 No. 43057 MIA-1456 Decision No. 26331-A

Appearances:
Mulcahy & Wherry, by Mr. Stephen L. Weld, for the City.
Northwest United Educators, by Mr. Alan D. Manson, Executive Director, for the Association.

On March 14, 1990, the Wisconsin Employment Relations Commission appointed the undersigned as impartial arbitrator to issue a final and binding award in the above-captioned matter pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act. A hearing was held at Rice Lake, Wisconsin, on April 23, 1990.

At the hearing the parties had the opportunity to present evidence, testimony and arguments. No transcript of the proceeding was made. The record was completed with the exchange by the arbitrator of the parties' post-hearing briefs on June 29, 1990.

The parties are in disagreement about two issues, wages and health insurance, for 1990. The City offers to increase wages 4.5%. The Association's offer is a wage increase of 4.0%. Both parties offer to revise the existing language governing "Hospital and Surgical".

The City's final offer on Hospital and Surgical is as follows:

Revise Article 13, paragraph A to read as follows:

> Hospital and Surgical. The City agrees to pay up to $309 per month for family coverage and up to $121 per month for single coverage for each employee's health and welfare insurance policy. The City may participate in the State insurance group. The City may

also change the insurance carrier to another provider provided the insurance coverage under the new carrier is substantially equivalent to the current coverage.

The Association's final offer on Hospital and Surgical is as follows:

Revise Article XIII-INSURANCE, Part A to read as follows:

Hospital and Surgical The City agrees that it will pay the total premium of each employee's health and welfare insurance policy. The City also agrees that it will not change carriers of hospital and surgical insurance without a vote of the Association; except that the City may change the insurance carrier or carriers provided the insurance coverages and benefits under the new carrier or carriers are equal to or better than the current coverages and benefits.

The arbitrator is required to weigh the statutory factors in making his decision. There is no dispute with respect to some of them: (a), the lawful authority of the employer; (b) stipulations of the parties; that portion of (c) dealing with the financial ability of the unit of government to meet the costs; (f) overall compensation presently received by the employees; and (g) any changes during the pendency of the arbitration proceedings.

The first issue which must be addressed is a determination of which comparables are appropriate. The Association uses those which Arbitrator Rice selected as primary comparables in an arbitration involving these parties in 1987. These are the cities of: Altoona, Hudson, Menomonie, New Richmond, Rhinelander and River Falls. The City does not urge that these cities not be used. It urges, however, that equal weight be given to nine additional units of government which are within a 50-mile radius of Rice Lake: Amery, Barron, Bloomer, Chetek, Cumberland, Ladysmith, Shell Lake, Spooner and the Barron County Sheriff's Department. The City argues that these smaller units, in close proximity to Rice Lake, and in the same labor market, are better comparables than more distant cities. Several of them in the Association's group are close to St. Paul and Minneapolis which, the City argues, affects both the financial status and the type of police problems faced by the employees. The comparables urged by the City are the same ones which it unsuccessfully urged Arbitrator Rice to adopt in 1987.

The arbitrator has read the Rice Award. He finds Rice's conclusions with respect to comparability to be as applicable now as in 1987. The arbitrator has considered the City's argument but is not persuaded by them that he should view the comparables in a different manner than Rice did.

In keeping with Rice's findings and conclusions about the comparables, the arbitrator will put principal reliance on the Association's suggested comparables, and give some consideration, where appropriate to the City's additional comparables.

The parties are in agreement that the principal issue in this case is health insurance. Both offers exceed the wage settlements offered by the City to other bargaining units of the City, and are higher than all but one of the increases in the primary comparables group. The median wage increase among the comparables for 1990 is 4.0%.

Since Rice Lake's wages for police were already above most of the comparison police wages, there is no need at this time for any catch-up pay. The City is well aware of that, but it offers a higher wage increase than the Association offers in order to provide a quid pro quo for its health insurance offer which reduces the health insurance options and/or increases the health insurance costs to almost all members of the bargaining unit.

The issue of the quid pro quo will be considered below. If the wage issue is viewed alone, the arbitrator finds the Association's final offer to be the more reasonable of the two, since it costs less than the City's offer, is above the increase in cost of living but less so than the City's offer, and since it leaves Rice Lake in a highly competitive position with respect to the primary comparables. Of course the City's final offer is also very reasonable, but it is above the amount called for by the usual measures, e.g. internal and external comparables and cost of living changes.

With respect to health insurance, both final offers differ from the prior contract language. There are several changes:

1) The 1988-89 Agreement provided that the City would pay the total premium. The Association's final offer continues that language. The City's final offer is to pay up to a certain monthly dollar amount: ($309 family; $121 single). The 1990 family premiums are $240.94 for the basic plan, $309 for one HMO and $319 for the other HMO. The single premiums are $96.38 for the basic plan and $121 and $89 for the HMOs.

2) The City's final offer adds new language, "The City may participate in the State insurance group."

3) The City's final offer eliminates the language of the 1988-89 Agreement whereby it agrees to "not change carriers of hospital and surgical insurance without a vote of the Association; except. . . ."

4) The 1988-89 Agreement had language which expired 12/31/89 which allowed the City to change the insurance carrier "only with the approval and recommendation of the Insurance Committee and provided such change is made for all other City employees. . . ." Neither party's final offer contains this or similar language.

5) The 1988-89 Agreement contained language which specifically expired 12/31/89 and which stated with respect to a change of the insurance carrier by the City, "provided the insurance coverage under the new carrier is substantially equivalent to the current coverage. . . ." The City's final offer contains the above-quoted language. The Association's final offer states, ". . . provided the insurance coverage and benefits under the new carrier or carriers are equal to or better than the current coverages and benefits. . . ."

The statute requires that the arbitrator consider that part of factor (c) "the interests and welfare of the public." In the arbitrator's opinion neither final offer is favored more than the other when this factor is considered. The City's final offer costs more than the Association's, but the City's offer also reduces the amount of money that the City must pay for employee health coverage. The total salary differential, without consideration of the City's savings in health insurance is about $2500. The City could save that much money or more in health insurance costs, if its final offer is implemented, depending upon the coverage choices made by the affected employees.

Factor (d) requires the arbitrator to consider comparisons of wages, hours and conditions of employment with "other employes performing similar services and with other employes generally: 1. In public employment in comparable communities. . ."

Internal Comparables

1) Each of the three other represented units of City employees has accepted the City's offer of dollar caps on the City's health insurance contribution for 1990. The City pays the full cost of the basic insurance plan for these units. Each of these units also agreed to give up HMO options altogether.

The employees in this proceeding would, under the Association's final offer, continue to have the choice of the basic plan and two HMO's, although only the basic plan and one

HMO would continue to be available to them at no cost for family coverage. The second HMO, to which 18 of the 19 unit employees belong, would cost each employee $10 per month in 1990. Single coverage under all three plans would still be paid fully by the City.

Comparisons with other units of the City favor the City's final offer on these cost arrangements, in the arbitrator's opinion.

2) The City has provided no testimony or evidence with respect to its proposal to allow it to participate in the State insurance group. This language also does not appear in the language accepted by other employees of the City. For these reasons, the arbitrator favors the Association's final offer on this point.

3) As far back as 1984, the parties bargained language which requires a vote of the Association if there is to be a change of insurance carriers. The City has not offered testimony or evidence supporting its proposal to alter this bargained language. Moreover, language is contained in the City's agreement with the firefighters which requires the approval of the Firefighters' Association before any change in health benefits can be made. There is no evidence that the City has sought elimination of that language. Clearly, the City is frustrated by the Police Association's unwillingness to agree to its proposed changes in health insurance arrangements during the past three years, and no doubt that is the reason the City seeks this language change.

The arbitrator favors the Association's final offer on this point because he favors bargained changes of contract language rather than imposed changes through arbitration. Nothing in the record indicates whether the City has sought to bargain changes in this language previously. The one aspect of the language which makes its elimination of less consequence than it otherwise might be is that the language requires a vote by the Association, not approval.

4) The language in the prior Agreement concerning the approval and recommendation of the Insurance Committee, and that any change be made for all City employees, expired on 12/31/89. For this reason, and the fact that neither party included it or similar language in its final offer, the arbitrator will not give this language further consideration.

5) The City's proposal allows a change in carrier provided that the new coverage "is substantially equivalent to the current coverage."

The firefighters' language in the 1988-89 Agreement does not contain a standard of comparison of coverage which must be met if the insurance carrier is to be changed. However, as previously noted, the City must get the approval of the firefighters of any proposed change.

There is an Agreement for 1990-1991 for Streets employees. There the parties agreed to language which is different than that contained in either final offer in the present dispute. The Streets language is: "substantially equivalent or superior to those under the existing plan. . . ."

There is a tentative Agreement for 1990-1991 with the Electrical Utility unit. The standard contained there is: ". . .provided the level of benefits is substantially equivalent to the current level of coverage. . . ." This is the same language as is included in the City's final offer in the current dispute.

It should be noted that the City's proposed language is identical to the standard on which the parties agreed in the 1988-89 language, which expired on 12/31/89.

None of the other of the City bargaining units has the language proposed here by the Association: ". . .provided. . . equal to or better than the current coverages and benefits . . . ."

With respect to the issue of the standard used, there is no internal consistency. That is, each unit in the City has different language in its Agreement. While it is the case that the term "substantially equivalent" is contained in two of the Agreements, those two have different standards, one being "substantially equivalent," the other being, "substantially equivalent or superior to. . . ." These differences notwithstanding, the arbitrator finds somewhat more support for the City's final offer than for the Association's on this point, since it would move the City closer to achieving internal consistency.

External Comparisons

The six cities in the primary comparison group each paid 100% of family health and dental payments in 1989 and 1990. In 1989 according to Association exhibits the median monthly family premiums by these cities was $222.02; for 1990 it was $297.75, an increase of 34.1%.

If the Association's final offer were to prevail, the City would pay family premiums for most employees in the unit of $308 in 1989 and $319 in 1990, considerably in excess of the median,

($85.98 in 1989; $21.25 in 1990) although only an increase of 3.2%. The City argues that its costs are relatively higher, in addition, when the fact that its police are scheduled to work a smaller number of hours than are worked by police in most of the comparison cities is taken into account.

The record shows the following standards in effect in these cities for changing the insurance carrier:

Altoona:	". . .equal to or better than. . ."
Hudson:	". . .present. . . benefits will not be reduced. . ."
Menomonie:	Nothing
New Richmond:	"equal to or exceeds"
Rhinelander:	". . .provided that the benefits of the present program are not reduced
River Falls:	"At the minimum, the . . .insurance coverage shall be equal to the policy currently in existence.

It is clear that the primary external comparables support the Association's position. They uniformly pay 100% of the premium ,and the language for changing carriers is more closely related to the Association's final offer than to the City's. While it is true that the City's costs of implementing the Association's final offer would continue to be above the median of the cost in the primary comparable group, the amount by which it exceeds the median would be sharply lower than it was in 1989.

Among the remaining comparables, cited by the City, in 1989 the following cities paid the full insurance premium: Barron, Bloomer, Chetek, Cumberland, Shell Lake, Spooner. Only Amery, Ladysmith and Barron County did not. In 1990 Cumberland and Shell Lake paid less than the full amount. Shell Lake's police are not represented by a Union.

If the primary and secondary comparables are combined, in 1989, twelve employers paid the full premium and three did not. In 1990, ten paid the full premium and five did not. Thus, although there has been some movement away from full payment by the employer, in cities geographically close to Rice Lake, the external comparisons still favor the Association.

The following is the language standard used for permitting changes in insurance carriers in the secondary comparables group:

Amery:	". . .identical to or greater than. . ."
Barron:	". . .substantially equal. . ."
Bloomer:	". . .determined by mutual agreement. . ."
Chetek:	Non-union
Cumberland:	". . .mutual consent. . ."
Ladysmith:	". . .at least equal to. . ."
Shell Lake:	Non-union
Spooner:	". . .will not be changed unless negotiated. . ."

It is the arbitrator's opinion that there is more support in the external comparisons for the Association's language than for the City's with respect to the share of payments by the employer and the standards used for changing carriers. The arbitrator views the widespread support for the Association's language as of greater significance than the fact that the City's premium costs are higher than in the comparison cities.

The City also presented data showing that the Rice Lake School District pays less than the full premium for its teachers, secretaries and custodians, while the Wisconsin Indianhead Technical College pays the full contribution for teachers and support staff. The Rice Lake Schools agreements contain "substantially equivalent" language. The WITC language is not in the record.

These comparisons, with Rice Lake Schools and WITC, are not as relevant to this dispute, in the arbitrator's opinion, as are comparisons with the City's other bargaining units, and what comparable cities pay to their police.

The statute also directs the arbitrator to consider comparisons with private employment in comparable communities. While the City included in its exhibits reports and surveys about increasing health costs in the private sector, none was specific to Wisconsin, much less to the comparable communities utilized in this dispute.

Factor (e) is the "cost of living." The City presented cost figures showing that its "total salary" increase offered for 1990 is an increase of 4.71%, while it calculates the Association's offer as being 4.21%. It does not present cost figures which include the effect on the cost increase of the respective health insurance offers. The Association does not dispute these figures, and also does not supply total cost increase figures which include the respective health insurance offers.

The City presents federal cost of living figures for nonmetropolitan urban area wage earners and clerical workers. These figures show that the cost of living increased 4.2% from December, 1988 to December, 1989. If the average monthly index for 1988 is compared to the same figure for 1989, the increase is 3.9%.

It is clear that both final offers exceed the cost of living increase. Both are reasonable and exceed the increase by less than 1%. The Association's final offer is closer than the City's to the increase in cost of living and thus is preferred since there is no compelling reason given for final offers to be in excess of the change in cost of living. However, the arbitrator does not view this factor as very important in this dispute because the parties' focus is the health insurance issue. The relationship between their differences on that issue and the cost of living is not significant during the term of the 1990 Agreement.

Factor (h) requires the arbitrator to consider other factors normally or traditionally taken into account in bargaining and arbitration.

The City argues that in interest arbitration, arbitrators have endorsed changes in the status quo when a compelling need to do so has been shown and where the party seeking the change has offered a meaningful quid pro quo as inducement for acceptance of the change. The City argues that the rapidly increasing cost of health insurance is the compelling reason for the change, coupled with the fact that the other bargaining units of its employees have already accepted dollar caps on the City's contribution and have agreed to the elimination of HMOs.

The Association has not agreed to dollar caps. The City's offer is not to eliminate HMOs altogether. The City's offer is more generous than that given to its other employees insofar as it continues to offer one HMO in addition to the basic plan. The City argues that it is offering a reasonable quid pro quo in seeking acceptance of these changes. Its offer of a 4.5% wage increase is .5% above what police received in comparable units for 1990 and is .5% to 1.0% greater than the wages offered to other bargaining units of the City.

With respect to the reasonableness of the quid pro quo, the City is indeed offering .5% more in wages, while still enabling the members of the bargaining unit with family plans to receive fully paid health insurance if they switch from the Midelfort Plan to the basic plan or the other HMO. The Association argues that in terms of after-tax dollars, the City's wage offer approximates $110 per employee for the year. If the employee continues present coverage in the Midelfort Plan, that coverage will cost the employee $120 per year. Thus, the Association argues, the alleged quid pro quo is in fact a net loss to the employee.

The arbitrator understands why employees are reluctant to change or give up health care arrangements which they view as satisfactory. However, the Association has not presented evidence showing that a switch by its members to the basic plan or to the other HMO will work a hardship in terms of the type of care and level of benefits they will receive. The City's offer eliminates full payment for the most expensive family health care plan. It offers a wage incentive, and the result of acceptance of that offer is continued availability of a choice of health care coverage to the employees at no cost to them. In the arbitrator's opinion, this is a reasonable quid pro quo.

Has the City shown a compelling need to make this change? It cites escalating insurance costs. Since 1987, it argues, the premiums for both HMOs offered have risen in excess of fifty percent, whereas there has been a two percent increase in the cost of basic coverage during that time. It argues that the $319 monthly premium for the Midelfort Plan is out of line with the $240 cost of the basic coverage which all other City employees have. It also cites the fact that it continues to have higher cost insurance than comparable cities. The Association argues that since 1989 the cost of the Midelfort Plan rose just 3.2%, using the family rate. It contrasts this to what it calculates as an average increase in premiums of more than 23% among the comparables, and 9.4% for the other HMO available to employees represented by the Association. The Association notes that in 1988-89 the parties reached a voluntary agreement which contained the present coverage. Thus, in the Association's view there has not been a rapid rise in the cost of the insurance which the City wants to eliminate in its offer. Also, the Association argues, while in the past the City's insurance costs have been much higher than in comparable cities, the gap is smaller now, approximately $20 per month, and thus there is less of an argument for change than was the case previously.

In the arbitrator's opinion, the City is justified in wanting to bring its benefit packages for all of its employees more into line with one another. It does not want to continue to offer benefits to one group of employees which cost some $80 per month more than what it offers to others of its employees. There may still be a gap of $70, under the City's final offer, if employees elect to continue in either of the two HMOs, but that represents some progress in reducing the disparity between employee groups. It is also significant to the arbitrator that the other represented employee groups involving three separate unions, have reached voluntary agreement with the City on dollar caps and reduced health insurance offerings in an effort to control costs. Thus, the arbitrator is of the opinion that there is sufficient justification for the City to attempt to change the status quo based on costs and on the fact that all of its other employees have voluntarily agreed to such arrangements.

The Association is correct that the premium increases from 1989 to 1990 were small, but there were much greater increases in the preceding year which the City attempted to address. As noted above, the cost increases for the City since 1987 are significant, and justify the City's final offer in this dispute seeking to reduce costs.

There was testimony about the bargaining history which led to these arrangements. City Clerk Schnacky testified that in 1989 in mid-term of existing agreements, the City bargained with all of its bargaining units except the police; that is, firefighters, street employees, and utility employees. All agreed, in return for the City's full payment of 1989 coverage, that there would be one health insurance plan, the standard plan. This was implemented also for non-represented employees.

Schnacky testified that the City attempted to bargain with the police also offering to make a one time payment of $500 to each employee in return for the Union's agreement to have only the standard plan. The offer was not accepted. Schnacky testified that she believes that the Union had a position that it would accept $1200 per employee.

Union representative Manson testified that the bargaining unit sought to keep the existing health insurance language. It was not interested in trading for wage or holiday concessions. With respect to Schnacky's testimony, Manson testified that the Union did not make a counterproposal. It merely said it wanted to maintain the existing language.

Schnacky was recalled and reiterated her testimony that the City felt that it got an offer, informally or formally, of $1200 from the Union. On cross-examination she testified that she doesn't remember that the figure was exactly $1200 and she doesn't believe that either party made a formal offer. She testified that the offers were made at a bargaining session in the context of lots of "maybes, if we do this, would you accept that?" She believes that Manson was the Union negotiator when these figures were discussed.

Union witness Bitz, a member of the Union's negotiating team testified that at a meeting which Manson did not attend, the City made a firm offer of $500 which the Union rejected. Asked on cross-examination if officer Rowe said $1200 would be acceptable, Bitz testified that he did not recall that, and stated that Rowe had no official function in the Union's negotiations.

Drost, chairman of the City's negotiating team testified that he was at the meeting where "there were figures thrown out." He recalls that the City made an offer of $500. He thought some figures were thrown back to the City by the Union, but he doesn't remember a figure. In any event, the City thought that the Union's figure was too high; that is, the figure was much higher than $500 and was "out of the question."

Johnson, a member of the City's bargaining committee testified that the City offered $500 and there was a $1200 offer made from the Union side which the City felt was too high. He doesn't remember who made the $1200 offer, but he imagines that it was Bitz.

In the arbitrator's opinion, this bargaining history is relevant insofar as it demonstrates that the City has been seeking agreement from the Association, to reduce its plan offerings and to cap the dollar contribution, prior to the present dispute. The City is not seeking to achieve through arbitration what is has not tried to achieve through voluntary bargaining in the past.

There was testimony concerning the history of the health insurance offerings by the City. Bitz testified that at some time prior to 1984 the City offered four plans. It then said that it would withdraw HMO options unless everyone signed up for the Midelfort HMP plan because it was cheaper than the others. Bitz testified that he did not want the Midelfort plan but agreed to take it so that others would be able to have it. The Midelfort plan is one of the two plans which the City is now trying to eliminate. Eighteen of the twenty members of the Union's bargaining unit belong to it. Bitz testified that through 1987 the Midelfort plan was cheaper than the basic plan.

Manson testified that for unknown reasons, in 1988, the HMOs became more expensive than the standard plan. It was after that that the City moved to negotiate more uniform language with the other units, to agree to a cap on the amount the City would pay, or to give up HMO options. The City was also offering wage and holiday concessions to the other units to accomplish the changes.

According to Manson, the insurance company told the City that its rates would be higher if the police didn't join the standard plan. After the Union rejected the City's offer, the City sought a firm quote from the insurance company of approximately $250. The City then unilaterally offered to pay this amount despite the existence of lower caps in the various labor agreements. Thus, Manson testified, the Union's refusal of the City's offer had no adverse effect on the City's other employees.

Manson testified that the Union also rejected the City's language because it felt that the new standard insurance that the City was offering was not substantially equivalent to the standard plan that it was replacing. The new plan was a WPS plan, which replaced a Blue Cross/Blue Shield plan. Schnacky testified that since the change the City has received no grievances from employees or their unions about equivalent coverage. She acknowledged that there were concerns about that before employees received their insurance books. After that, the City met with the insurance carrier and worked out any problems in that regard.

This review of the bargaining history and of the history of the health insurance arrangements does not provide strong evidence in support of either party's final offer. However, in the arbitrator's opinion, it supports the City's final offer more than the Association's. It shows that the City has been making reasonable efforts to accomplish changes in health insurance with all of its employee groups, to provide satisfactory coverage but at less expensive cost.

The Association argues also that changes in contract language should not be ordered by an arbitrator which are apt to result in disagreement in interpretation. The Association argues that the "substantially equivalent" standard is much less clear than the "equal to or better" standard. If the City's final offer is adopted and it proceeds to change health insurance carriers there are apt to be disputes, the Association argues.

It is unusual, in the arbitrator's experience, for health plans of different carriers to be identical. Even if there were an "equal to or better" standard, there would possibly be controversy over whether the new coverage was or was not equal to or better than the old. The arbitrator is not persuaded that the level of controversy would be significantly greater with one standard more than the other. Moreover, the arbitrator finds it significant that the "substantially equivalent" language was agreed to voluntarily in the 1988-89 Agreement between the parties. What was a reasonable standard for their use in a voluntarily bargained contract is still as reasonable if it is put into the new agreement by the arbitrator.

The Association argues also that the arbitrator should not support the City's position because it will change the balance between them during a hiatus if there is no new agreement reached upon the expiration of the Agreement. If the Agreement expires and the insurance premiums rise, the City's responsibility will be only to pay the stated dollar amounts, and the employees will have to pay the difference, whereas under the Association's offer the City would continue to pay the full cost of the insurance. The arbitrator does not view that as a sufficient reason to persuade him to favor one offer over the other. If there is sufficient reason to award in favor of the City, a number of things will result, one of which is the effect during the hiatus between Agreements.

The statute requires the arbitrator to choose one final offer in its entirety. Although the external comparisons with other police units clearly support the Association's final offer, the arbitrator is persuaded more by the City's final offer in relationship to what has been accepted by all of the other employees of the City. The City has justified its final offer on health insurance and has offered a reasonable quid pro quo to the

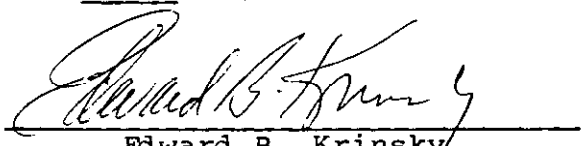
Association to gain its acceptance. The City is striving for greater consistency among its employees with respect to health benefits, and its final offer moves it towards that goal. Even with the changes resulting from implementation of the City's final offer, the Association's members will have more favorable health coverage arrangements than are enjoyed by the other employees. They will still have a choice of health care plans and they will still have a significantly greater dollar contribution towards coverage paid on their behalf if they elect HMO coverage.

Based upon the above facts and discussion, the arbitrator hereby makes the following

AWARD

The final offer of the City is selected

Dated at Madison, Wisconsin, this 10th day of August, 1990.



Edward B. Krinsky
Arbitrator