

BLC 05 1001
WISCONSIN EMPLOYMENT
RELATIONSHIP BOARD

Arbitration *
of *
CITY OF JANESVILLE *
and *
JANESVILLE PROFESSIONAL *
POLICE ASSOCIATION *
re *
Interest Arbitration *
WERC Case 56, No. 45017 *
MIA - 1568 *
* * * * *

ARBITRATION AWARD

Decision No. 26965-A

ISSUES

The issues are summarized below. The final offers are attached as Appendices A and B.

Duration: The City proposes a one year agreement; the Association proposes a two year agreement.

Wages: The City proposes that wages be increased by the same percent that the CPI-U for small metro areas in the north central region increases between 12/89 and 11/90 to a maximum of 4.5%. (That CPI increase was 6.27%. so the City offer is 4.5%)

The Association proposes that the bases be increased by 3% on 1/1/91, 2% on 7/1/91, 3% on 1/1/92 and 2% on 7/1/92.

Health Insurance: The City proposes that, effective 7/1/91, employees pay \$10/mo. for family plan coverage and \$5/mo. for single coverage. The City proposes adoption of the Advantage Cost Containment Programs. The City proposes that the deductible for drugs be increased from \$2 to \$6 for generic drugs and \$10 for brand name drugs.

The Association proposes no change in the health insurance coverage. Currently there is no employee contribution.

Medical Examinations: The City proposes that medical examinations will conducted by a City designated doctor at the Riverview Clinic or a City designated doctor at the Janesvilled Medical Center.

The Association proposes no change in the current agreement which permits the employees to choose the doctor who will conduct the medical examination.

INTRODUCTION

The Wisconsin Professional Police Association, hereinafter called the Association, filed a petition for compulsory final and binding arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act on December 26, 1990 to resolve its dispute with the City of Janesville, hereinafter called the City. A WERC staff member conducted an investigation on March 19, 1991 and advised the Commission on August 1, 1990 that an impasse existed. The Commission issued an order for arbitration on August 7, 1991 and, on August 14, 1991, the Commission appointed the undersigned as the arbitrator selected by the parties from a panel furnished to them by the Commission.

The arbitration hearing was held on October 2, 1991 in Janesville, Wisconsin. Appearing for the City were Dennis White, Attorney of Brennan, Steil, Basting & MacDougall and Susan Musick, Personnel Director; appearing for the Association were Richard T. Little, Bargaining Consultant, WPPA/LEER and Steven J. Urso, Business Agent, WPPA/LEER. Exhibits were exchanged at the hearing and corrections made by letters in October. Post hearing briefs were exchanged through the arbitrator on November 21, 1991.

DISCUSSION

Comparables: The Association proposed nine comparable cities with populations within 30% of Janesville's population and Beloit which exceeded the range by about two percent but is the nearest comparable to Janesville. The City proposed 12 comparables within 35% of Janesville's population including the ten proposed by the Association. For some purposes, the City also included Rock County Deputies. The Association indicated that it had inadvertently omitted one of the two additional comparables (Oshkosh), and did not object to its inclusion because it also fell within the 30% range. Given

the almost complete agreement on comparables, the arbitrator will use either the eleven common comparables or the slightly amended comparables used by either the City or the Association since these do not change the results.

The comparable cities in descending order of size are: Appleton - 65,675, West Allis - 63,221, Waukesha - 56,958, Eau Claire - 56,856, Oshkosh - 55,006, La Crosse - 51,003, Sheboygan - 49,676, Wauwatosa - 49,366, Fond du Lac - 37,757, Wausau - 37,060 and Beloit - 35,573. Janesville's population is 52,133 (City Ex. 1 & Assoc. Ex. 6).

Duration: Association Exhibit 11 indicates that none of the ten comparables it lists have one year agreements. All of them appear to be two year agreements. Five of the comparables have two year contracts for the 1990-1991 period. Three have multi-year contracts ending at the end of 1992 or in July, 1992 and two are not settled for 1991. It would appear that the pattern among comparable cities is two year contracts (Assoc. Ex. 11). In addition, the City and the Association have a history of two year contracts.

Wages: There is really very little difference between the wage offers for 1991. City Exhibit 23 shows that the police officers (depending upon length of service) gain from \$111 to \$153 more under the City offer during the year than they would under the Association offer. On the other hand, because of the greater "lift" under the Association split increase of 3% at the start of the year and an additional 2% at mid-year, the Association offer generates a salary that ranges from \$132 to \$209 more than the City offer according to City Ex. 22.

The comparison of the Janesville wages with the 1990 and 1991 average of the comparables at various length of service levels (City Exs. 21 & 22) show that the relationship of Janesville wages to the average has improved in 1991

over 1990. Association Exhibits 23 and 24 present a similar picture. In those exhibits, Janesville's 5th place ranking in '1990, 10 cents above the \$14.40 average of the comparables used by the Association, is not appreciably changed in 1991, still ranking fifth under either offer and 5 to 13 cents above the \$15.10 average of those comparables. The arbitrator notes also that the 5% lift under the Association offer is slightly closer to the 4.9% average of the comparables listed by the Association in its Exhibit 27 than the 4.5% proposed by the City.

So far as the internal comparables are concerned, the City offer is identical to the settlements reached with other City groups (City Ex. 6). As such it is slightly preferable to the Association offer although the Association offer is so close that choice of that offer should not create wage disparities among City groups. Given that the offers are so close on wages, and that both fit the statutory criteria almost equally well, the arbitrator decided that the choice of offers will be determined by which of the other elements of the offers are preferable under the statute

Health Insurance: The Association offer fits the pattern found among the external comparables while the City offer fits the pattern found internally. City Exhibit 28 shows that employers pay 100% of the premium for nine of the thirteen comparables it lists and that there is an employee contribution in three others and possibly in the fourth depending on the plan to which the employee subscribes.¹

¹Initially, the arbitrator selected eleven comparables. However, the exhibits of the parties deviate slightly from that number. For example, City Exhibit 28 includes the eleven listed initially by the arbitrator and adds Rock County and Brookfield. If these two are not considered, the number of comparables where the employee makes no contribution are reduced from nine to seven.

The arbitrator also calculated the dollar average contributed by the employers of the 13 comparables listed in City Exhibit 28. That average of \$388 is approximately \$36 per month more than the City would pay under the Association offer and \$46 more than it would pay under its offer. Under the Association offer, the City contribution would rank ninth of thirteen comparables and under its offer it would rank eleventh of the thirteen comparables. As have already been stated, the external comparables support the selection of the Association offer.

The City introduced various exhibits in support of its contention that the internal comparables support its position in this arbitration. City Exhibit 4 shows the population of various employee groups. The largest unionized groups are the firefighters (IAFF) with 78 employees and the DPW (AFSCME) unit with 77 employees. The Association unit includes 59 employees. The arbitrator examined the health insurance provisions in the IAFF and AFSCME/DPW agreements (City Exs. 42 & 44) as well as the health insurance provisions in the agreements of two of the smaller units (Exs. 43 & 45). In all four agreements there are employee payments of a portion of the health insurance premium.

It appears that the strategy used by the City to achieve its goal of employee contribution to the health insurance payment was to provide, starting in 1989, that increases in the premium in excess of fifteen percent per year would be paid by the employees subject to a cap of ten dollars per month for family plans and five dollars per month for single plans. This arrangement was negotiated first in 1989 for the AFSCME/DPW unit effective in 1990, that is during the second year of the contract. The same '89-'91 contract provided that the employee contribution for 1991 would cut in if the total premium

increased by more than fifteen percent above the 1990 total premium and again would be capped at five and ten dollars per month for single and family coverage (City Ex. 44).

A similar arrangement was negotiated by the City with the Police Supervisor's Association and the AFSCME/Law Enforcement Civilians Unit except that the employee contribution was not capped. This resulted in monthly employee contributions of \$10.01 single and \$11.03 family in 1990, and \$5.00 single and \$14.65 family in 1991 (City Ex. 7). Starting in 1990, the City also instituted the five and ten dollar per month employee contribution for the non-union administrative group.

On September 14, 1990, Firefighters Local 580, IAFF signed a three year agreement effective 1/1/90 which provided for an employee monthly contribution of \$5 and \$10 per month respectively toward the single and family health insurance premium (City Ex. 42). City Exhibit 7 shows that this contribution was started in 1991. This means that except for the Association, the employee groups have agreed to arrangements under which employees will pay a portion of the health insurance premium in 1991.

This arbitrator has the impression that most arbitrators, when faced with this choice of relying primarily on internal rather than external comparables, in determining which position on fringe benefits is correct, have chosen to rely on internal comparisons. In the situation where the last group to settle has held out in order to avoid a contractual change or settlement pattern agreed to by all other groups in a particular city, arbitrators have been reluctant to issue arbitration awards which break negotiated patterns.

In this instance, there are two other aspects of the health insurance clause on which the parties disagree. The City wishes to increase the

deductible for drugs from \$2 to \$6 for generic drugs and \$10 for brand name drugs, a change that has been accepted by all other groups (See City Ex. 10). In addition, the City proposes an annual cap of \$300 for drugs as opposed to the current arrangement without a cap.

Again the argument is primarily that other internal comparables have agreed through bargaining to an increased deductible and in some instances to a cap. In addition, however, the pattern among the external comparables is unclear and does not support the Association position to the extent that it does on the point of employee contributions to the premium. Six of the comparables listed on City Ex. 31 do not have separate prescription plans and include drugs in major medical plans which have larger deductibles including other expenses. Five of the other seven comparables have \$2 deductibles or less and the other two have plans providing for zero to \$5 deductibles, deductibles which are similar to those currently existing in Janesville.

The arbitrator does not believe that there is something sacred about maintaining a low dollar deductible for drugs while the costs of drugs and expenditures for drugs increase. The arbitrator believes that, on this point, the internal pattern appears more reasonable than the idea of maintaining the lower figure, just because it is currently the figure. Surely, the Association would reject such an argument if it were applied to salary increases.

The third aspect of the health insurance clause which is in dispute is the proposal of the City to institute a managed health care program called The Advantage Program. The key features of this program are pre-admission authorization, concurrent review and mandatory second opinion surgery. The plan is not unusual; its features are common to most managed health care program which attempt to monitor health care expenditures in order to slow

down cost escalation. The five other employee groups of the City have agreed to participate in the Advantage Program (City Ex. 8).

The Association rejects the Advantage Program stating citing arbitration awards (Yaffe in LaCrosse, WERC Dec. 19714-A, 1/83 and Krinsky in Village of West Milwaukee, WERC Dec. 12444-A) requiring the employer to show the need for changes from the status quo. In this instance, the arbitrator believes that the increased cost of medical care provides sufficient grounds for instituting a managed health care program. The arbitrator does not believe that such programs are the solution to the problem of rising health care costs attributable to the development of new technology and more sophisticated medical treatment but believes that they may dampen slightly increased costs arising from unnecessary in-hospital procedures.

On the whole, the arbitrator finds the City offer on health insurance preferable to that of the Association because the City decision to institute a managed health program along with a small employee contribution to the health care premium and increased dollar deductible for drugs have been accepted in bargaining by the other groups of City employees and are generally being explored and adopted elsewhere.

Medical Examinations: The Association argues that the City has failed to establish that a reason for change exists. Yet City Exhibit 33 provides three reasons which are not rebutted by the Association. The City claims that the designation of two medical doctors to conduct the physical examinations will ensure that employees receive a full physical, but no more, unless the employee desires an additional test at his own expense, and that costs will be equalized. The chart shows that the cost of an office visit varies from approximately \$35 to \$97 and that the cost of a chemical profile varies from

about \$19 to \$50. The arbitrator believes that the City has met its burden and that this change in the procedure is sensible.

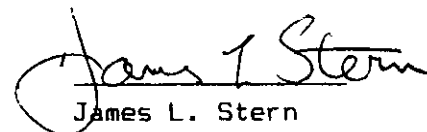
Summary: Although neither offer fails to meet the statutory criteria, the arbitrator believes that the City offer is preferable, mainly because its proposal that employees pay a small portion of the health insurance premium is one which has been agreed to in bargaining by all of the other City units and is one which is being tried by many employers in the public and private sector in their attempts to dampen rapidly rising health care costs.

The arbitrator has expressed his views about the City and Association proposals on the other issues and finds that the differences on the other issues are not sufficient to change his above stated preference for the City offer. The arbitrator notes also that selection of the City offer of an Agreement ending December 31, 1991 put the parties back into negotiations now, thereby offering the Association an immediate opportunity to correct what it considers to be faulty arbitral judgment.

AWARD

With due consideration of the testimony, exhibits and arguments of the City and the Association, the arbitrator finds that the City offer is preferable under the Wisconsin Statutes and therefore selects the City offer and hereby orders it and the agreed upon stipulations to be put into effect.

12/4/91
December 4, 1991


James L. Stern
Arbitrator

RECEIVED
JUN 26 1991

UNION EMPLOYMENT
RELATIONSHIP

1.) Term of Agreement

One Year: January 1, 1991 to December 31, 1991

2.) Wages, Article IV

Effective 1 January 1991, the annual salaries of Police Officers of the City of Janesville shall be increased at the rate of 1% of salary for each percentage point of increase on the North Central Region Small Metro Areas CPI-U measured from December 1989 to November 1990, to a maximum total of 4.5%.

3.) Health Insurance, Article XIV

The employer will pay the premium for employees and dependents, if any, for the basic hospital and surgical care plan, except that effective July 1, 1991, employees will pay ten dollars (\$10.00) per month for family plan and five dollars (\$5.00) per month for single plan. Coverage will include compliance with the Advantage Cost Containment Programs throughout the term of this Agreement.

The employer will pay the premium for employees and dependents, if any, for the prescription drug program, with a \$2.00 deductible. Effective July 1, 1991, the employee deductible shall be \$6.00 per generic drug and \$10.00 per brand name drug. If generic drugs are not available, employees will pay the deductible on brand name drugs. Effective July 1, 1991, prescription drug coverage includes a cap on the employee's copayment of \$300 per calendar year per employee, regardless of single or family coverage.

The City will pay the premium for up to a lifetime maximum of \$2,000 coverage for dependent children under age 19, if any, for the free-standing dental with orthodontia program throughout the term of the Agreement and the City will pay the premium for employee and dependents for free standing dental plan for the term of this Agreement.

4.) Medical Examinations, Article XVII

The City will provide and pay for bi-yearly medical examinations for all officers covered by this Agreement provided that such medical examination is conducted by 1 City designated medical doctor from the Riverview Clinic or 1 City designated medical doctor from the Janesville Medical Center. The medical examination will include a physical examination including a medical history, vision test, stool hemocult, urinalysis, CBC (complete blood count), and a chemistry profile. An electrocardiogram and a chest x-ray will be included after the employee reaches the age of 40. The cost of the medical examination as defined above will be paid by the City. An follow-up and/or additional testing will be conducted in a separate appointment. The cost of such follow-

up and/or additional testing shall be the responsibility of the employee. No member of the Association shall be discharged, retired, pensioned or otherwise terminated from employment on the basis of information acquired in the medical examination, unless the condition discovered is such that the employee is no longer capable of performing the duties connected with his/her job classification.

5.) All other terms of the existing collective bargaining agreement and agreed-upon stipulations to remain included.

**LAW
ENFORCEMENT
EMPLOYEE
RELATIONS**



DIVISION

**WISCONSIN
PROFESSIONAL
POLICE
ASSOCIATION**

9730 WEST BLUEMOUND ROAD
WAUWATOSA, WI 53226
414 / 257-4000
1-800-236-4002

7 N. PINCKNEY STREET, NO. 220
MADISON, WI 53703
608 / 256-3344
1-800-362-8838

June 10, 1991

RECEIVED
JUN 10 1991
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

Mr. James W. Engmann
Wisconsin Employment
Relations Commission
P. O. Box 7870
Madison, WI 53707-7870

RE: City of Janesville (Police Department)
Case 56 No. 45017 MIA-1568

Dear Mr. Engmann:

The following comprises the final offer of the Association in the above-captioned matter.

1. Term: Two (2) years, 1991-1992
2. Wages: 3.0% on base for all classes effective 1/1/91
2.0% on base for all classes effective 7/1/91
3.0% on base for all classes effective 1/1/92
2.0% on base for all classes effective 7/1/92
3. Health Insurance: Status quo on language except to up-date contract years.

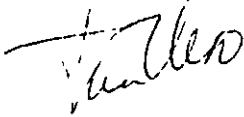
Association does not agree to the Advantage program.
4. Medical Examinations: No change in present contract language.
5. All tentative agreements as previously agreed to are to be applied to the labor agreement to replace those sections so designated.

Mr. James W. Engmann
June 10, 1991
Page 2

6. Contract reference to years 1991 to 1992 to be added in appropriate places.

All other terms and conditions not addressed are to remain as is.

Sincerely,



Steven J. Urso
WPPA/LEER

SJU:jma

cc: Larry Lanners
Mike Shepherd