

OFFICE (11/15/92)
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STATE OF WISCONSIN
BEFORE ARBITRATOR FREDERICK P. KESSLER

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of Interest
Arbitration Between:

Wisconsin Professional Police
Association/Law Enforcement Employee
Relations Division

Case 90 No. 45185
MIA 1588
Decision No. 27038-A

and

City of Marshfield

A. INTRODUCTION

This arbitrator was appointed by Order of the Wisconsin Employment Relations Commission after their finding that an impasse existed between the parties on the matter of a collective bargaining agreement for the years 1991 and 1992. The matter was submitted to final and binding arbitration pursuant to Sec. 111.77 Wis. Stats. between Wisconsin Professional Police Association/Law Enforcement Employee Relations Division (hereafter "Union") and the city of Marshfield, (hereafter "the City").

After consultation with representatives of the parties, hearing was conducted in Marshfield, Wisconsin, on December 17, 1991. In addition, the parties agreed to supplement the record with information provided by letter from the City dated January 6, 1992. A post-hearing briefing schedule established and later modified by the parties. Briefs and reply briefs were received from both parties on approximately February 7, 1992. After the briefing schedule was complete, and prior to this decision, the Union provided a copy of a decision from another arbitrator involving a contract between the City and its firefighters. The City objects to consideration of that award in this proceeding.

B. APPEARANCES

The Union was represented at the hearing by Gary Wisbrocker, Business Agent for the WPAA/LEER. Also present and testifying were Mark F. Page, President of the Union, Gary Jepsen, Vice President of the Union, and Brian T. Bettinger, a member of the Bargaining Committee.

The City was represented by Attorney Dean R. Dietrich of Rudder, Ware & Michler, S.C. He was assisted by paralegal Barbara Fliss.

C. STATEMENT OF FACTS

The Union and the City have been unable to agree on several terms for the 1991-1992 collective bargaining agreement between them. The arbitrator is required by the provisions of Sec. 111.77(4)(b) to select the final offer of one of the parties, without modification of that offer in any way. Section 111.77(6) Wis. Stats. requires the arbitrator to consider specific factors in picking the better final offer. Those criteria will be discussed specifically in connection with each of the final offers.

The 1989-1990 agreement is accepted by both parties in its entirety, with the exception of the terms concerning (1) wages, (2) health insurance, (3) compensation for police training, and (4) life insurance. Both parties make identical offers on basic wage increases (3% in January and 2% in July of each year) and on a provision requiring police officer residence within the Marshfield School District.

The primary area of dispute has to do with health insurance coverage. The Union wishes to retain the benefits and employee contribution level of the 1989-1990 contract; the City wishes to change to a new carrier for all bargaining unit employees and offers higher wages by establishing a shift differential, increased payment for life insurance, and expanded education reimbursement in exchange for the health insurance change.

E. FINAL OFFER OF THE UNION

The Union final offer does not require any other salary or wage or benefit increase beyond the mutually offered percentage. It continues health insurance coverage under the existing plan, the Greater Marshfield Community Health Plan ("GMP"). This health plan is essentially an HMO with full services in a variety of areas including dental and vision care. As under the prior contract, the City would pay 85% of the premium for that plan. It does not appear to have a deductible or co-pay requirement.

F. FINAL OFFER OF THE CITY

The City proposes the same basic wage increases as the Union, and also adds shift differential payments which increase the total wage package significantly. Additional pay, at the top of the scale, is offered for those participating in the Field Training Officer program. The City offers to make full payment of life insurance costs, and expand its payment for police college education.

In exchange for the more generous compensation offer, the City proposes switching all bargaining unit members to health insurance provided by Blue Cross/Blue Shield, which contains a deductible payment requirement, and which has a "usual-customary-reasonable" payment cap, but increasing the City portion of the premium to 90%. The City proposes to pay 90% of the BC/BS premium and of a dental insurance program with BC/BS (or contribute the same number of dollars to the DentaCare program). In addition, the City proposes to self insure for physical examinations/well baby care up to \$200 per year for each of three family members.

G. ISSUE PRESENTED

Which final offer better meets the criteria established by Sec 111.77(6) Wis. Stats.?

H. DISCUSSION

The final offer of the Union and the City must each be measured against the criteria of Sec. 111.77(6) Wis Stats, and the offer which better satisfies those criteria selected. The criteria will be discussed in sequence.

The first two criteria, the lawful authority of the municipal employer, and any stipulations of the parties, do not here provide a basis for differentiating the two final offers. The City has the authority to implement either of the final offers, and indeed has in the past agreed to the terms proposed in the Union final offer. The parties have agreed to continue most of the terms of the prior contract, and only those as to which they differ are presented in the final offer. (The Union does not present a new health insurance proposal, but seeks to continue the prior contract provisions in that regard.) Both final offers satisfy these criteria equally, to the extent the criteria apply at all.

The interests and welfare of the public and the financial ability of the City to meet the costs must be considered. Public welfare is served by both final offers in that each promotes labor harmony by providing a comprehensive form of health insurance and reasonable wages. The ability of the City to meet the costs of each final offer is not seriously in dispute. Indeed, the City's costing analysis of the two offers, Ex 8 and Ex 9, demonstrate that over the two year term of the contract, the City offer is expected to cost eighty three thousand five hundred and twenty eight dollars (\$83,528.00) more than the final offer of the Union.

The City, in Ex 11, appears to attempt to develop an inability to pay argument by demonstrating a 176.90% increase in cost of the GMP over a ten year period. However, the City fails to take the next step by showing a significantly lower increase in the premium cost for comparable Blue Cross/Blue Shield coverage over the same period. This arbitrator is aware that health costs in general have risen dramatically in all areas of this country over the last ten

years. That fact alone does not establish an inability of the City to pay the cost of the proposed insurance. Nor does the City's anecdotal arguments suggesting that costs would be reduced overall if deductibles were imposed establish an inability to pay. Indeed, the anecdotal argument might just as logically be that the lack of a deductible encourages preventive primary care which reduces the costs for extraordinary tertiary procedures.

When the City's offer is the more costly of the two, it cannot persuasively argue an inability to pay. However, recognizing the interests of taxpayers in conserving fiscal resources, I find the Union offer better satisfies this criteria.

Comparison of the wages, hours and conditions of employment of both public and private employees in comparable communities, sometimes referred to as "external comparables", provides useful insight. Both parties offer as comparable units of government the cities of Wausau, Stevens Point, and Wisconsin Rapids, and the counties of Marathon, Wood, and Portage. These have been recognized as appropriate measures of comparability in prior arbitrations by Arbitrator Stern in Decision No. 12680-A and Arbitrator Imes, in Decision No. 22722-A.

Wood County, in which Marshfield is located, is adjacent to Portage and Marathon Counties. Marathon County, in which Wausau is located is larger geographically and by population than Wood and Portage. The population of Wausau is almost twice that of Marshfield. However all are substantially rural counties with the identified cities being the largest urban areas within the counties. The size of the sworn officer staff (full time law enforcement personnel) of each unit of government bears approximately the same relationship to the population as a whole. I believe these are appropriate for comparison purposes.

The exhibits of both the City and the Union establish that the basic wages of the Marshfield police officers have, for the last ten years been the lowest of all the comparable units of government (Union Exhibits 16 through 26 and City Exhibits 41 and 42)--with the exception of 1981, when Marshfield officers made \$3.00 per month more than the lowest paid comparable employee. This relative ranking will not change with the basic wage offer proposed by both sides. (Union Exhibit 27 and 28), consequently neither offer gains a preference based on this criteria.

Although the City presents an exhibit which summarizes the shift differential among the comparable units of government, (City Exhibit 40) they vary so dramatically that it is not possible on the information before me to engage in any meaningful comparison or ranking of impact of the shift differential. For example, Stevens Point, which in 1990 ranked third of the seven units of government in base pay, pays no shift differential. At the same time, Wausau and Marathon County pay a flat monthly amount, and Wisconsin Rapids, Portage and Wood counties pay at various hourly rates

depending on the time of day. The actual annual fiscal impact to the unit of government is impossible to determine on the information presented. Consequently, I cannot say the proposed shift differential change offered by the City puts the Union in any better position relative to the comparable units of government than it has enjoyed under prior contracts. It is impossible to say that the City offer moves wages into a higher ranking relative to the comparable units of government, when their shift differentials are also included.

The City demonstrates convincingly that the various terms and conditions of the health plan now enjoyed by the Union are better in many respects than the other plans enjoyed by the employees of the comparable units of government. The City also demonstrates that the 1991 total monthly premium for family coverage with major medical provisions included is higher than a monthly premium in the comparable communities, although it exceeds the Portage County self-funded program by only \$.03 per month. (City Ex 32) In 1992, Stevens Point is the only comparable community also offering a plan with no deductible and no co-pay provision; that plan has a monthly family premium that is \$82.38 less than the Marshfield family premium. Stevens Point pays 94% of the premium as compared to 85% paid by Marshfield.

The City's final offer, however, includes a new dental coverage not previously a part of the Marshfield benefits. Wausau, Wisconsin Rapids and Marathon County appear to have dental plans already in place. The City plan cost apparently will exceed the cost of each of the other plans.

Little helpful information is provided with regard to private sector comparables in the insurance and wages analysis. Exhibit 58 summarizes the cost of health insurance programs among various private employers in the general geographic area. Little information as to the scope of the coverage is provided, which makes the catalogue of deductibles, co-pay provisions, and employer paid amounts somewhat difficult to compare, either as to each other or as to the Marshfield benefits. Based on the information before me, I am unable to say that either offer is preferred based on private sector comparables.

Viewing the health package as a whole, when comparing the City offer to the comparable communities, the City offer is slightly to be preferred because what it proposes by way of deductible, co-pay, and dental coverage bears a greater resemblance to the benefits offered by the comparable communities. Even under the City offer, it appears that both as to benefits and as to total cost, Marshfield will continue to be at the top of the list of comparable communities in health benefits.

The cost of living is to be considered when evaluating the

final offers. Marshfield is a part of the nonmetro urban area in the north central states, class size D. As to the basic wage offer, since both are identical, neither gain a preference under this criteria. I am aware that health care costs have increased substantially in excess of the general cost of living increase in the United States over the last several years. No information has been presented which isolates the cost of health care, and compares that increase either nationally or locally to the alternative proposals contained in the final offers. Consequently I am unable to say that either offer is preferred based on this statutory criteria.

The overall compensation package, including all benefits, and the stability and continuity of employment, supports each final offer approximately equally. Under either offer, the Union remains in a strong position as to overall benefits, enjoys a slight increase in base wages, and will enjoy an increase in wages, pension, and social security payments based on the increased shift differential in the City's final offer. In the Unions final offer, the failure to gain the shift differential increase, and the resulting increases that follow from that wage increase, is, in the Unions view, offset by the security of a premium health insurance program which they know and trust. Each package, as a whole, is supported by this criteria.

No changes in the foregoing circumstances have occurred during the pendency of the arbitration proceeding, consequently this criteria does not favor either offer.

Other factors normally taken into consideration through voluntary collective bargaining or otherwise between the parties, in public service or private employment are also to be considered. Here we must evaluate the contracts of other employees of the City (the internal comparables), the bargaining history of the parties, and whether a substantial quid pro quo justifies imposing a change in the status quo by arbitration. This new health package constitutes a major change from the prior agreement and the history of the parties. Change should be imposed by arbitration only in exchange for an adequate quid pro quo and only upon a showing that the condition sought to be changed is unreasonable or contrary to generally accepted standards.

Voluntary contract agreements between the City and employees similarly situated to the Union here are appropriate factors to consider in resolving the health insurance dispute. Of the City employees represented by a union, 27.5 employees (11 in the Water Treatment Plant represented by the Teamsters, and 16.5 in the Clerical/Technical classification, represented by AFSME) have accepted the Blue Cross/Blue Shield insurance. Their base wage rate percentage increase for 1991 and 1992 is identical to the amount present in both offers hers. However, this leaves 77 City employees who have refused the Blue Cross/Blue Shield package; these include 42 employees of the Department of Public Works, 27

Firefighters, 8 in Ordinance Enforcement, and the 27 Police Officers involved in this arbitration. The refusal by such a large portion of the City employees to voluntarily agree to the new insurance package indicates a preference for that aspect of the Union final offer.

The bargaining history of the parties indicates that this is apparently the first year that the health insurance issues now in dispute have been on the bargaining table. No evidence was presented suggesting that the City had previously attempted to bargain for co-pay, or deductible, or pre-certification or any of the other terms it points to in the Blue Cross/Blue Shield proposal as advantageous and cost saving. Likewise, no evidence has been presented suggesting intransigence on the part of the Union in attempting to deal with legitimate concerns about health care cost control. Indeed, the bargaining committees willingness to take the provisions of the City's final offer to the Union for ratification suggest a willingness to explore alternatives. I cannot find that the membership refusal to ratify a contract that gave them demonstrably higher wages in exchange for different health benefits warrants a finding that the rejected terms should be imposed by arbitration. Indeed, the vote made it clear that the membership considers the wage increase an inadequate quid pro quo for loss of the health benefits they obviously value.

The City argues that the increased wages are a quid pro quo of sufficient magnitude to justify the arbitrator in imposing the change sought by the City in health insurance coverage. It is a well recognized aspect of labor relations law that each party to a contract must exchange something of value for something else of value it seeks. That is the fundamental principle of the collective bargaining process. Here, the Union has made it quite clear by its vote that the increased wages are not an adequate exchange (or quid pro quo) for loss of the health benefits it has gained at the bargaining table over the years, and apparently enjoyed for more than 10 years.

An arbitrator should not impose conditions to which the parties have not agreed at the bargaining table in the absence of compelling circumstances. I find no such circumstances here. The City has a legitimate interest in exploring ways to control its costs, and the Union has demonstrated a willingness to discuss those issues. Here, the contract offered by the City, by its own calculations, will cost it approximately \$83,500 more over the term of the agreement than will the contract offered by the Union. This does not demonstrate either financial hardship by the City, or that the insurance condition is unreasonable or contrary to the generally accepted standards of comparable communities. The Union has obviously accepted base wages at the bottom of the comparable units of government in exchange for health benefits that seem to be at or near the top of the comparable units of government. That is an exchange that is neither unreasonable nor irrational. I believe it would be inappropriate to alter that exchange by arbitration.

I. AWARD

For all the reasons discussed above, I find the final offer of the Union to be the preferable offer. It shall be incorporated in the 1991-1992 agreement between the parties.

Dated at Milwaukee Wisconsin this 31st day of August, 1992.



Frederick P. Kessler
Arbitrator