BEFORE THE ARBITRATOR

In the Matter of the Petition of

I.A.F.F. FIREFIGHTERS LOCAL 127

For Final and Binding
Arbitration Between
Between Said Petitioner
and

Case 208
No. 46993 MIA-1704
Decision No. 27488-A

CITY OF LA CROSSE

Appearances:

Davis, Birnbaum, Marcour, Devanie & Cogan, Attorneys at Law, by James G. Birnbaum, appearing on behalf of the Union.

James W. Geissner, Director of Personnel, appearing on behalf of the Employer.

INTEREST ARBITRATION AWARD

I.A.F.F., Firefighters Local 127, (herein "Union") having filed a petition to initiate interest arbitration pursuant to Section 111.77, Wis. Stats., with the Wisconsin Employment Relations Commission (herein "WERC"), with respect to an impasse between it and City of La Crosse (herein "Employer"); and the WERC having appointed the Undersigned as arbitrator to hear and decide the dispute specified below by order dated December 22, 1992; Undersigned having held a hearing in La Crosse, Wisconsin, on February 5, 1993; and each party having filed post hearing briefs, the last of which was received March 2, 1993.

ISSUES

The sole issue remaining for the parties' calendar 1992 and 1993 agreement is health insurance. The expiring agreement provides that the Employer will provide for fully paid family and single health insurance without any deductible to the employee, except that employees electing family coverage will pay $8.00 per month toward the family plan. The Union proposes to keep the current plan, except effective January 1, 1993, the family contribution would be increased to $16.00 per month. The Employer proposes that effective January 1, 1993, that the Employer pay 100% of both family and single plan, but that employees would be required to pay a $100 per year deductible on the single plan and have a maximum of three $100 deductibles per family plan.

POSITIONS OF THE PARTIES

The Union takes the position that historically this unit has bargained extensively to maintain its health insurance benefit and premium contribution plan in conjunction with other bargaining units of the city. In its view the arbitrator should reject the change proposed by the Employer and require that the Employer negotiate the same with the Union voluntarily. The offer of the Employer herein is inconsistent with the current benefit enjoyed by the vast majority of the organized employees of the Employer, with the exception of the police union which voluntarily negotiated a change. It notes that the City's expert, Mr. Trapp, had recommended a change in the health insurance plan between the La Crosse schools and teachers association, but that the parties had retained their current fully paid-no deductible benefit. Further, the arbitrator should not impose change where, as here, only one unit has accepted that benefit and that unit was "paid generously" for that concession.

Alternatively, the Union argues that any major change in health insurance should be "purchased, not stolen." The record indicates that over the years this local has made major concessions (including compromising wage increases) in order to continue the status quo on health insurance. Indeed, the current health insurance plan was obtained by sacrificing wage parity with the police association during the negotiations in about 1985. Further, the offer made to the police association during these negotiations is better than that offered the Union herein. Accordingly, the offer of the Employer further erodes the position of the Union vis a vis parity with the police rather than returning the quid pro quo of parity which the Union exchanged in the 1985 negotiations. Similarly, the Employer has been inconsistent in its negotiations with the airport security and transit bargaining units.

The Union argues that it has historically relied upon comparisons to other units in the city. It argues that if the Employer is now attempting to use external comparisons, it must fail because it is not using the same comparisons as in the award between the parties of Arbitrator Chatman of September, 1986. In any event, it argues its offer is not unique among external comparisons. In any event, the Union has not received wage increases over the years consistent with those of fire fighters in other cities over the years. Many of those which have deductible plans also have provisions which pass on the cost savings to the employees which result from the use of the deductible.

The Union also argues that the Employer has failed to exhaust other options before going to a deductible plan: namely, the Employer has failed to use cost containment committee contained in the parties' prior agreement. Additionally, the Employer has failed to show that deductibles would lead to any cost containment

in this specific bargaining unit. There is no evidence that anyone in this unit has over-used the current health plan. By contrast it argues that firefighters have a higher risk of infectious disease than other city employees in that they are called to scenes of medical emergencies, and accidents with people who are sick. Further, their living arrangement increases the risk that colds and other illness are passed on to other firefighters and, in turn, their families. The Union reiterates its objection to the admission of the parties' tentative agreement for implementation of undisputed terms on the basis that the agreement expressly states that it shall have no precedential weight and shall not be used by either party in this proceeding.

The Employer argues that the parties have reached agreement on all of the issues except health insurance. It notes that since the Union is also proposing increases in the employee contribution, there is less than $50 difference per employee between the two proposals. Accordingly, the essential issue herein is not cost shifting, but a better allocation of the cost burden of the employee's share. It notes that health insurance costs have risen more than 200% since 1984, but the employee contribution has remained $8.00 per month (family plan only). Thus, since 1984, the employee contribution has dropped from about 4.4% of the family plan to 1.75%. It relies upon the testimony of its expert in this case, that its proposal is in the interest of both employees, employer and the public because deductibles discourage the unnecessary use of health benefits whereas the current contribution system does not.

The Employer heavily relies upon comparison to the police non-supervisory bargaining unit which settled on terms essentially identical to those in its final offer herein. Since 1978, the police and fire units have enjoyed a "tandem relationship" in which their wages and benefits have been related. Since 1978, the fire unit has had the same health plan as the police unit. Since 1982, across-the-board wage increases in the police and fire units have been the same. Other units have also had the same health benefits during that period. It notes that it has been hampered for many years with agreements among its units with staggered dates for renewal. This not only has made it difficult to change benefits, but would make it self-defeating to implement inconsistent health plans. The Employer has been consistent in seeking the proposed change herein among all of its units which contracts started on January 1, 1992 (fire, non-supervisory police, police supervisors and SEIU unit), as well as the newly certified 4 person airport security unit which agreement commences July 1, 1992.

It notes that the agreement it reached with the transit union was a one-year agreement expiring December 31, 1993, which continued the current health insurance plan, but contained a me-too clause changing the plan if both SEIU and police agree to the change. [The Employer notes that the bus driver unit granted concessions

and cost savings of $100,000 or $3,571 per employee in its last negotiation and its increase of 4.5% represents approximately the cost of living guaranteed under their agreement.]

The Employer also has argued that its proposal is far more comparable to the same benefit in similar bargaining units in comparable communities. This is true whether one uses the group of communities found comparable by Arbitrator Chatman in a prior award between the parties (Appleton, Beloit, Eau Claire, Fond du Lac, Oshkosh, Sheboygan) or one includes Janesville and Wausau as proposed by the Union or one uses a wide range of communities in Wisconsin without regard to their immediate comparability.

It also notes that other public employers in the same area have been attempting to deal with the health insurance problem. While the teachers and La Crosse schools have continued an insurance program without deductibles, their plan in less expensive that here and teachers have agreed to accept reductions in wages if their health insurance costs exceed a set amount. Similarly, the costs of the county health plan are even less than that of the school plan.

The Employer also relies upon the fact that the parties herein had reached several voluntary tentative agreements providing for virtually the same changes in health insurance which the Employer is proposing herein. While the same was not ratified, the Employer believes that it should be given heavy weight in this proceeding.

The Employer believes that its wage offer is more than a quid pro quo especially when increases in uniform allowance and cash incentives for unused sick leave are considered. Additionally, it believes its total package is supported by the cost of living and direct comparison to internal and external comparisons.

DISCUSSION

In this proceeding, the arbitrator is to select the final offer of one party or the other without modification and to evaluate his or her selection on the basis of the following criteria as specified in Section 111.77 (6)), Wis. Stats.:

a. The lawful authority of the municipal 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 the costs of any proposed settlement.

d. Comparison of wages hours, and conditions of employment employment of the municipal employes involved in the arbitration proceedings 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 prices 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 pensions, 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 parties, in the public service or in private employment.

Evidentiary Issues

The Union strenuously opposed the admission and/or consideration by the arbitrator of two items of evidence; 1. the tentative agreement of the parties which essentially accepted the kind of change in health insurance proposed by the Employer and 2. the agreement of the parties to permit the Employer to implement all items not in dispute during the pendency of this arbitration. The Union's position on these issues is essentially correct and they are not substantively considered herein. The purpose of Section 111.77, Stats., is to encourage voluntary collective bargaining with the least possible resort to arbitration. One of the factors which arbitrators traditionally consider in interest arbitration under h. is the past bargaining between the parties. However, the consideration of rejected tentative settlements of the agreement under dispute has the clear potential to undermine the willingness of parties to reach such agreements in risky circumstances. There are no circumstances in dispute in this case which overcome this very important policy consideration and, therefore, the rejected tentative settlements of the parties are not considered in this decision.

On January 22, 1993, the Employer and Union signed an agreement permitting the implementation of all items not in dispute. The agreement provided in relevant part as follows:

"... 4. This agreement shall not constitute a modification of position or in any way be used by either party for any purpose in the pending arbitration proceeding. ..."

The agreement is clear and unambiguous and forbids consideration in this case. The substantive consideration of the terms of this agreement would therefore violate the agreement itself. The failure to consider the terms of this agreement would not violate the Arbitrator's responsibility under law, result in an unlawful award or an award which would require or authorize a party to engage an unlawful act. Accordingly, no substantive consideration is given to the existence or terms of this agreement.

Existence of a Continuing Agreement for First Dollar Coverage

Currently the Employer has the following bargaining units:

description	union	number in unit
1. fire	IAFF	93
2. non superv. police	LPPOA	65
3. mass transit employees	AMTU	36
4. streets and non prof. clerical	SEIU	190
5. airport emergency	LAFPA	4

Historically, all bargaining units have shared the same health insurance benefits and the premiums were paid on a city-wide basis until the Employer went to self-insurance. It has set its premium equivalents on a city-wide basis. [No one has alleged that these premium equivalents have been set in an inappropriate way to influence negotiations for this agreement.] This unit, like other bargaining units of the city, has historically placed a high priority on retaining its current level of benefits, even if it required some sacrifice in wage increases. There may have been some differences in the amount various units contributed to the health insurance premium in the past. Prior to 1985, unit employees were paid more than comparable employees in the police department. At that time, the police agreement contained essentially the same provision concerning health insurance premium as the recently expired fire agreement, providing that the Employer pays all health insurance premiums but $8.00 per month of the family premium. The fire agreement merely specified that the Employer pay a specified amount for the health insurance premiums. It is unclear if there was an actual difference in the amount employes were then contributing to the health insurance during the term of agreements. It is undisputed that the Union accepted this package largely because of the health premium aspect. There is no

evidence of any written agreement specifying an Employer offer of quid pro quo other than the comprehensive collective bargaining agreements in effect, which do not have any unusual provisions linking the two concessions. Similarly, over the years, the parties have regularly entered into agreements which the Union believed were based upon it taking smaller than justified wage increases in order to maintain the existing health insurance plan. Specifically, although in 1985, police and fire comparable wage rates were identical, the Union herein has taken adjustments over the years in which the monthly rates for firefighter are now about $90 per month less than comparable police position's. The Union does not deny that the Employer had sought these differences because of its view that economically the two are effectively the same because of, among other things, the effect of over-time hours and social security contributions.

Contrary to the position of the Union, the evidence is insufficient to conclude that there is any agreement by which the Employer has guaranteed first dollar coverage on health insurance. There is no testimony supporting an the existence of any express agreement or discussions between the parties of that nature. The evidence does establish that preservation of the current health insurance package has always been a high priority in this unit and that the Employer has not successfully sought major modifications to the health benefit in the past.

Effective Use of Health Dollars

The health insurance proposal has two relevant aspects. First, both parties proposals shift more of the cost of health insurance to employees. Second, the Employer's proposal shifts costs to those employees who use the services instead of uniformly spreading the cost to the employees. This latter issue is clearly the most important difference between the parties proposals. The Employer offered the testimony of insurance expert David Trapp and specific data about its health insurance situation.

The Employer has demonstrated a need for a change in the existing health plan in that its city-wide premium equivalent has risen faster than other premiums and is among the highest rates by any measure of comparison. Its monthly family premium for 1993 is more than $100 per month higher than that for organized units in the county and under the teacher collective bargaining agreement in the La Crosse schools. The current premium is the highest in the comparability group used by arbitrator Chatman with the exception that the Oshkosh family rate is higher. (Beloit's rate on an annualized rate might be higher as well.) In 1989-1993, the monthly family premium rate increased respectively; 14.55%, (1989), 15.24%, 14.33%, 9.59%, 21.06% (1993). David Trapp also indicated that the Employer's reported increases in premium equivalents was higher than that which is generally occurring in the La Crosse market.

The testimony of Mr. Trapp demonstrated that the Employer's proposal was likely to assist in controlling its spiraling health insurance costs. Mr. Trapp has had extensive experience in the insurance industry and since 1986, he has been acting as a consultant on employee benefits. He has frequently worked as a consultant with local area employers, including the La Crosse Public Schools.

He credibly testified that the use of deductibles is more effective in controlling health insurance costs because it 1. directly reduced the cost of the insurance itself, 2. gave employees an incentive to control their own use of insurance benefits and 3. more equitably transferred the cost of the use of insurance to those who used the benefit more. He based these conclusions upon published reports of statistical studies which support the conclusion that those who share in the health care costs based upon their usage tend to use the benefit more judiciously and without significant effect on their health. By comparison, he concluded that using a premium sharing basis alone merely shifted cost to the employees. This evidence is given heavy weight in this proceeding.

Internal Comparisons

For 1993, The police bargaining unit accepted the Employer's proposal herein during negotiations for its 1992-1993 agreement. Section 19 of the 1990-92 transit employee agreement provides that any change made in establishing health insurance deductibles, among other things, which is uniformly made to unrepresented employees, SEIU Local 180 unit and non-supervisory police employees, will be implemented 30 days later in the transit unit. [It is undisputed that the Employer has not been inconsistent with its position herein in the way in which it treats its non represented employees.] SEIU is in arbitration as to this issue. The Union correctly argues that the internal comparability issue ought not be the sole controlling issue in this case because the Employer is using the "tail to wag the dog." However, the evidence demonstrated by the comparisons does strongly support the Employer position. Further, while there are some minor differences between the total package of the major units which settled, these are minor and the packages are virtually identical to that offered the bargaining unit herein. The Union is correct that the total package settlement with the transit unit is larger; however, the evidence indicates that the unit is engaged in a proprietary activity, has enjoyed a cost-of-living and other provisions different than other city units and in exchange for the increase in this agreement granted a specific quid pro quo of concessions far exceeding the present value of the difference of the offer made by the Employer to that unit.

External Comparisons

Neither party offered specific evidence of comparability and both relied, in part, on the comparability group found appropriate in the award of Arbitrator Chatman. The Employer offered comparisons to a long list of Wisconsin communities. This evidence indicates that in any of these groups, the vast majority of public employers use deductibles rather than employee contributions and that the amounts of the deductibles proposed by the Employer are comparable to those used in other communities.

Conclusion

It is important to note that the Union argued that the Employer failed to exhaust other methods of cost saving before attempting to use this method of cost shifting. This argument has substantial merit. However, because I have concluded that the main issue is one of cost saving and not one of cost shifting and because I have also concluded that the deductibles proposed herein are well within the norm for cost savings measures, I have concluded that this argument is not persuasive under the specific facts of this case. On the basis of the above and foregoing, the offer of the Employer is preferable to that of the Union. Accordingly, it is adopted.

AWARD

That the final offer of the Employer be included in the parties 1992-1993 agreement.

Dated at Milwaukee, Wisconsin, this 29th day of April, 1993.

Stanley H. Michelstetter II
Arbitrator