6881-I-87-163

BEFORE THE ARBITRATION PANEL

In the Matter of Interest Arbitration Between:	
PIERCE COUNTY FIRE DISTRICT NO. 2	
Employer	
and	OPINION AND AWARD OF NEUTRAL ARBITRATOR JANE R. WILKINSON
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1488	
Union	

AAA NO. 75-390-0172-87

MEMBERS OF THE ARBITRATION PANEL:

Jane R. Wilkinson - Neutral Chairperson
James L. Hill - Union Member
Duane G. Fleming - Employer Member

APPEARANCES:

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For the union: James F. Imperiale, Esq., Griffin, Imperiale, Bobman & Verhey, P.S., Trans-Pacific Trade Center, 3700 Pacific Highway East, Tacoma, Wa. 98424-1136. Telephone: (206) 922-2919

DATE OF AWARD: June 9, 1988

INTRODUCTION

The 1987-1988 collective bargaining agreement between the Pierce County Fire District No. 2 (the "District") and Local 1488, the International Association of Fire Fighters (the "Union") states, at Article XII, Section 1: "The [medical] insurance plan used shall be mutually agreed upon by the Union and the District."

The parties reached an impasse in their negotiations as to the actual plan to be offered, and submitted the issue, pursuant to RCW 41.56.450, to interest arbitration before a tri-partite panel. The undersigned, Jane R. Wilkinson was designated neutral chairperson. James L. Hill was appointed by the Union, and Duane G. Fleming was appointed by the District. The panel conducted hearings on February 3, 4 and 10, 1988. The record consists of a transcript of hearing prepared by a court reporter and a number of exhibits. The neutral chairperson received the briefs of both parties on April 19, 1988, which is deemed the closing date of hearing for purposes of RCW 41.56.450. The parties stipulated to a 60-day extension of time for the arbitrators' decision. On June 1, 1988 the arbitration panel met to discuss the issues. This decision follows.

BACKGROUND

The District has 80 employees, 59 of whom are in the bargaining unit to which this case pertains. The District has 12 non-uniformed employees in a different bargaining unit, also represented by the Union. The District has nine unrepresented employees.

The District historically has offered its employees an insurance plan maintained by the Washington Fire Commissioner's Association ("WFCA"). The WFCA maintains its own insurance plan in large

part due to a statutory obligation its member fire districts have to certain active and retired fire fighters. This obligation arises from Ch. 41.26 RCW, the Law Enforcement Officers' and Fire Fighters' (LEOFF) Retirement System, which took effect in 1970. 1969 Wash. Laws, ex. sess. Ch. 209. Among other things, the 1969 statute required employers to provide uniformed fire fighters with 100% lifetime medical reimbursement. The Legislature repealed this requirement in 1977, but existing employees were grandfathered. 1977 Wash. Laws, ex. sess. Ch. 249. Those existing employees, many of whom are now retired, are known as "LEOFF Is." Uniformed employees hired after 1977 are known as "LEOFF IIs."

The medical reimbursement obligation an employer has to LEOFF I employees, both active and retired, is onerous because the medical costs of that group of employees is relatively high. LEOFF I's are a greater utilizer of medical services (as compared to LEOFF II's) for two reasons: 1) 100% coverage induces a higher utilization of medical services, and 2) LEOFF I's are an "aging" group (i.e., no new, younger members can ever be added) requiring greater medical care. In addition, state industrial insurance does not cover active LEOFF Is. Testimony was received (and it stands to reason) that the group premium structure a medical insurance carrier offers to RCW 41.26 employers is dependent on the ratio of LEOFF Is to LEOFF IIs in the group.

Washington Physician's Service (WPS) is the carrier of the WFPA plan offered by the District. WPS is affiliated with Blue Shield. Robert Still, vice-president of Schwarz/Shera and Associates, the plan's broker, testified that WPS's premium structure is based on an assumed contractual term that all participating employers must offer only the WPS plan to its employees. The principal reason for this alleged restriction is that the WPS does not want an employer to contract with another carrier (on more attractive terms) for LEOFF II coverage, while

leaving WPS with the burden of LEOFF I coverage. Mr. Still testified that because of RCW 41.04.180, (set forth below at page 9) the WPS plan now allows an employer to offer one alternative plan, a health maintenance organization ("HMO") maintained by Group Health Cooperative of Puget Sound ("Group Health").

Sixty-nine fire districts are enrolled in the WFCA insurance program. The total employee enrollment is 1078, plus dependents. LEOFF I enrollees constitute 35.4%, while LEOFF II enrollees constitute 64.6%.

The WFCA program contains two reserve accounts which are used for stabilizing rates. The WPS plan maintains an "internal rate stabilization reserve" (i.e., a reserve of prior excess premiums which are used to level future rates) of two-months' premiums (about $220,000). WPS refunds any remaining excess premiums to the policy holder, WFCA. WFCA applies those refunded premiums to an external reserve trust, known as the "Insured Rate Stabilization Reserve Account" ("IRSRA"). Funds in that account are used to "buy down" future premiums. The IRSRA trust has approximately $731,000 in assets. The WPS plan also has an "incurred claim reserve" (run-out reserve in the event of plan cancellation) of $370,000.

The Union established its own medical insurance plan in 1987 pursuant to the Washington State Council of Fire Fighters Health and Welfare Trust. The carrier of the plan is Blue Cross of Washington/Alaska. Employees enrolled in the Union-sponsored Blue Cross program may choose between two plans: the "Traditional" (fee for services) plan, and the "Prudent Buyer" (preferred provider) plan. In general, the Prudent Buyer plan is intended to be more cost-effective so long as medical care is provided by physicians designated by Blue Cross.

Five fire districts or city fire departments currently

participate in the Union-sponsored plan: districts in Lacey, Snohomish County and Pierce County and the cities of Spokane and Hoquiam fire departments. A large percentage of the enrollees from Spokane. Approximately 510 individuals are enrolled, plus dependents. LEOFF I's constitute 82.6% of this enrollment.

Both parties submitted documentation of plan benefits for each plan in issue. They also submitted evidence comparing the level of benefits offered for these plans. One such document was a benefit comparison chart prepared by consultant Donald M. Stewart. A similar compilation was prepared by Robert Still. In general, the plans at issue provide similar benefits, but they vary as to the amount of coverage for each benefit. Both parties presented testimony that the benefit differences are not significant.

The District's premium liability under each party's proposal cannot be exactly stated. This is because the premiums depend on the number of enrollees in each plan offered. The District proposes both the WPS plan and the Group Health HMO, so its annual premiums would depend on the number of employees enrolled in each. The Union proposes both its own Blue Cross Traditional and Prudent Buyer plans, and also would retain the District's WPS and Group Health plans. If the Union's proposal were adopted, the District's premium liability would depend on the mix of employees enrolled in each of these four options, assuming (and this is open to question) that the WFCA program could co-exist with the Blue Cross program. For purposes of approximate comparison, however, the District presented evidence showing the following monthly premium cost, assuming 100% enrollment under each plan listed:

For the WFCA-WPS plan:	$19,213.20
For the Blue Cross Prudent Buyer plan with vision coverage:	$18,681.47

For the Blue Cross Fee for Services plan with vision coverage:	$18,339.42
For the WFCA-Group Health plan:	$17,555.92

These estimated monthly premium costs include the District's premium contribution for the approximately one-fourth of its work force that is not in the bargaining unit involved in this case, as well as for an additional 11 retired or disabled LEOFF Is, who also are not in the bargaining unit. The premiums stated for the WFCA plans are after IRSRA rate subsidies are taken out. Testimony was presented that this subsidy currently is at about $11 per active LEOFF I per month.

The parties' collective bargaining agreement, Article XII, Sections 3 and 4, contains a ceiling on the District's premium contribution for LEOFF II employees of $286 per employee and $102 for dependents. The District could end up paying less than the amount established by the ceiling, but if the premium levels exceed the ceiling, then the employees must pay the difference. Because of Ch. 41.26 RCW, there is no ceiling on the District's liability for LEOFF I employees. Of the 91 individuals currently enrolled in the District's insurance program, 41 are LEOFF I.

ISSUE AND PROPOSALS

The District proposed contract language that would offer the bargaining unit employees the choice of either the WPS plan or the Group Health plan maintained by the WFCA.

The Union proposed contract language that would allow the bargaining unit employees to choose among 1) the District-offered WPS plan; 2) District-offered Group Health plan; 3) the Union-sponsored Blue Cross Traditional Plan; or 4) the Union-sponsored

Blue Cross Prudent Buyer plan. 1/

Thus, the issue is, applying the criteria set forth in RCW 41.56.460, which medical insurance plans(s) should be offered?

ARGUMENTS OF THE PARTIES

ARGUMENTS OF UNION:

1. RCW 41.08.180 requires employees to be given the choice of not less then two health care contracts from two separate insurance carriers. The intent of the statute is to give employees a real choice. Roswell Bond, the District's expert witness, testified that both the District's and the Union's plans are "good plans." The premium cost for the Union-sponsored plan is slightly less than the District-sponsored offerings. Moreover, the District's concern about future premium hikes under the Union-sponsored plan has been substantially solved by the negotiated ceiling on the District's premium obligation. The arbitrators should heed the recommendation of the jointly-authorized Donald M. Stewart report (March 12, 1987) which stated that the Union-sponsored plan "must be considered as the most attractive program . . . based on both competitive premium and benefit structure shown."

2. The District's plan does not allow employee input. The WFCA maintains total control. The need for a Union-sponsored plan exists so that the represented employees can have greater control over the nature and extent of benefits offered. As things presently stand, the District unilaterally reserves the right to modify both the premiums and the benefits of the insurance coverage. Benefits may vary between LEOFF I and LEOFF II employees in ways that will benefit the District. The IRSRA trust also has unilateral control over premium structure, insofar as it decides the extent to which it will buy-down premiums-including the greater buy-down of LEOFF I coverages. LEOFF I's are people who are not even in the bargaining unit.

3. The District argues that the Union plan would force a hardship on the WPS premium structure. Under this rationale, no new plan could come into existence since the actual impact of a new plan will always be impossible to determine. Moreover, the

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1. The Union had originally proposed (as evidenced by its submission letter of January 28, 1988) to offer only the Union-sponsored Blue Cross plans. On the second day of hearing, the Union was allowed to amend its proposal to include the WPS and Group Health plans as well.

District's arguments concerning the future impact of the Union plan are speculative, with no foundation in actual experience. The arbitrators should bear in mind that there is nothing to prevent IRSRA funds from being used to stabilize alternative insurance plans.

4. The District argues that acceptance of the Union proposal would necessarily cause the WPS and Group Health options to disappear because of the 100% participation requirement. This argument is based on a flawed understanding of the WFCA contract with the carrier. In fact, the broker, Robert Still, could not point out contractual language that required 100% participation. The language identified by Mr. Still (District Exhibit 5, sec. 2A at 15) contains no such requirement).

5. Interest arbitration results should not lead to lasting dissatisfaction (citation omitted). Continuation of the District plan will lead to real dissatisfaction and would again raise itself as an issue at the next contract negotiation.

6. There are other problems with the WFCA program that should be weighed in these proceedings: There was clear evidence at the hearing of improper self-dealing by trustees of IRSRA trust by providing rental space and loans to the settlor of the trust, WFCA. Wilkins v. Lasater, 46 Wn.App. 766 (1987). Also, both the District and IRSRA trustees were aware for some time of the RCW 41.04.180 to provide a choice of plans, but ignored this until recently.

ARGUMENT OF THE DISTRICT:

1. The Union proposal would end District participation in the WFCA program because of its 100% participation requirement. Thus, the Union's proposal violates RCW 41.04.180 (two-plan, two carrier requirement) and RCW 48.46.180 (HMO requirement) because it lacks an HMO and has but one carrier.

2. Interest arbitration favors the status quo, thereby moving the burden of proof to the Union. This is especially true where the demand of the Union is innovative or novel.

3. The following are the advantages of the WFCA program:

A. It has a larger enrollment than the Union plan, an 18-year claims experience, and a proven track record. The Union plan has small and evolving claims experience, making large premium fluctuations more likely. Higher premiums are especially likely under its current enrollment which is LEOFF I-heavy. A new premium will go into effect as early as July, 1988.

b. It has a $220,000 rate stabilization reserve; the Union

plan has none.

c. It has a large external IRSRA reserve of about $713,000. The District's interest is about $60,000. The Union has no comparable reserve.

d. Although the parties' collective bargaining agreement contains a ceiling or cap on premiums, this cap pertains to LEOFF II employees only. It is not possible to cap the District's liability to LEOFF I employees. If aggregate premiums exceed the LEOFF II cap, pressure will be exerted in future negotiations to raise that ceiling.

e. Management control is an important fiscal issue. Management must control the range of benefits in order to control the premiums. In addition, it must ensure that the plan gives LEOFF I's all the benefits to which they are statutorily entitled. The District is concerned that the Union plan will diminish the LEOFF I benefits, leaving the District with the residual liability.

f. Contrary to Union suggestions, the District cannot easily revert back to the WFPA program. It would leave the IRSRA funds, and there is nothing to prevent the WFPA from making re-entry difficult.

g. A comparability study shows comparable fire districts use the WFCA plan.

h. Applying the reasonable negotiator test, one must conclude that given the volatility and uncertainty of both medical insurance generally and the Union's plan specifically, no reasonable negotiator would agree to the Union's proposal.

DISCUSSION AND ANALYSIS

RCW 41.56.460 requires contract arbitrators to consider: the legal authority of the employer, the parties' stipulations, comparisons with wages, hours or working conditions offered fire fighters employed by districts of similar size, the cost of living, changes in these factors during the proceedings, and "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." RCW 41.56.460(f).

Some of these statutory considerations do not apply to this dispute: There was no evidence presented concerning the cost of living (apart from the cost of medical care). Stipulations were few. The arbitrators were not informed of any changes in the relevant factors during these proceedings.

The statutory guidelines of interest here are the legal authority of the employer, comparability, and "other factors" that are "normally or traditionally taken into consideration" when determining wages, hours and conditions of employment.

A. Legal Authority of the Employer

Both parties raise questions of legal authority under RCW 41.04.180. In addition, The District questions whether the Union's proposal satisfies RCW 48.46.180.

RCW 41.04.180 states (emphasis added):

> Any county, municipality, or other political subdivision of the state . . . may, . . provide for all or a part of hospitalization and medical aid for its employees and their dependents through contracts with regularly constituted insurance carriers or with health care service contractors as defined in chapter 48.44 RCW . . : Provided, That any county, municipality, or other political subdivision of the state acting through its principal supervising official or governing body **shall provide the employees thereof a choice of policies or plans through contracts with no less than two regularly constituted insurance carriers or health care service contractors or other health care plans, . . .**

RCW 48.46.180(2) states (emphasis added):

> Each employer, public or private, having more than fifty employees in this state which offers its employees a health benefits plan, and each employee benefits fund in this state having more than fifty members which offers its members any form of health benefits **shall make available to and inform its employees or members of the option to enroll in at least one health maintenance organization . . . :** Provided, That unless at least twenty-five employees agree to participate in a health maintenance organization the employer need not

> provide such an option: Provided further, That where such employees are members of a bona fide bargaining unit covered by a labor-management collective bargaining agreement, the selection of the options required by this section may be specified in such agreement: And provided further, That the provisions of this section shall not be mandatory where such members are covered by a Taft-Hartley health care trust, . . .

The District argues that the Union proposal violates both quoted statutes, because it is offered through only one carrier and contains no HMO. The District's argument rests on the assumption that the Union's proposal presents a "disappearing" option with respect to the WPS and Group Health plans, since 100% employee enrollment in those two plans is necessary to their collective viability.

The District's argument fails for want of proof. I perused the contract between the WFCA and WPS, and could find no language prohibiting a participating fire district from offering its employees other health insurance plans. The language pointed to at hearing by Robert Still does not pertain to this question. There is nothing, of course, to prevent the WFCA/WPS from amending their contract in this respect, but, to my knowledge, that has not occurred.

Moreover, even if the WFCA/WPS had a 100% participation requirement (with an exclusion, presumably, for Group Health), it is not clear that Group Health would require enrollment only in its own plan or the WPS plan. Thus, while the WPS plan might become a "disappearing option," the Group Health option might very well survive. If it did, then the requirements of both RCW 41.04.180 and 48.46.180(2) would be satisfied. Finally, with respect to RCW 48.46.180(2), one must consider whether the Union's proposal is protected by the first or third proviso. Because I have rejected the District's argument on other grounds, I do not now need to make that determination.

The Union argues that the District, through the WFCA, belatedly offered the statutorily-required second plan, an HMO, after ignoring the statutory mandate for a considerable length of time. (Apparently the HMO was not offered until this dispute went to mediation). The facts upon which the Union's argument rests are correct. However, a contract arbitration is prospective in nature. Past errors and omissions are not considered unless a nexus can be shown between those events and the statutory standards for interest arbitration decisions. In this case, the District's proposal now complies with the above-quoted statutes; thus the legal question no longer exists. The District's past failure to present the second health care option is not relevant.

Another consideration relating, perhaps, to "legal authority" pertains to certain transactions performed by the trustees of the IRSRA trust. The Union assails possible illegal self-dealing between the WFCA and IRSRA trust because of loans and rental space that the trustees have provided to the settlor, the WFCA. The Union cites Wilkins v. Lasater, 46 Wn. App. 766 (1987) for the proposition that conduct such as that evidenced in the instance proceedings constitute a breach of trust.

Assuming, without deciding, that the cited conduct is indeed a breach of loyalty on the part of the IRSRA trustees, I find that the conduct has only a slight bearing on this case. I certainly would not want to ignore conduct on the part of the trustees that might substantially impair the trust res, to the detriment of both the District and its employees. However, I am not convinced that the conduct has any such substantial effect. I appreciate, however, this evidence as being indicative of the reasons the Union has for being dissatisfied with the WFCA offering. It is something to keep in mind, but it is not dispositive.

B. Comparability

Because of the nature of this case, comparability assumes less importance than in, for example, a wage case. The Union does not dispute the District's evidence pertaining to comparability, although it apparently does dispute the District's contention that the appropriate measure for comparison is the population served, rather than the size of comparable fire departments. In any event, the Union's health plan is relatively new, and there has been insufficient time for it to gain wide-spread acceptance. It has been adopted by five fire fighter employers, the largest of which is the City of Spokane. It has not been adopted, according to figures presented by the District, in any of the nine fire districts serving comparable populations (plus or minus 33%) to that served by Pierce County Fire District No. 2. There are six cities operating fire departments serving populations of comparable size. Those cities offer neither the Union-sponsored program nor the WFCA program. Instead, they offer plans sponsored by the Association of Washington Cities.

These comparisons weigh in the District's favor. (I assume, for purpose of this analysis, that the appropriate measure is population. No evidence was presented specifically pertaining to like-sized fire departments or districts). They also justify an assumption that the Union proposal is "novel" or "innovative." The significance of that assumption will be discussed below.

C. Other Considerations

The final instruction of RCW 41.56.460 is to consider "such other factors" that are "normally or traditionally" taken into consideration when wages, hours, and working conditions are determined. This universe may consist of such additional items as ability to pay, public interest and productivity (none of which are relevant here). See, Assoc. Hosp. of East Bay, 71-2

Lab. Arb. Awards (CCH) at 4722 (Koven, 1971); E. Elkouri and F. Elkouri, How Arbitration Works, Ch. 18 (4th ed. 1985). More broadly stated, however, "the fundamental inquiry, as to each issue, is: What should the parties themselves, as reasonable men, have voluntarily agreed to?" Twin City Rapid Transit Co., 7 L.A. 845, 848 (McCoy, 1947).

Certainly, a "reasonable negotiator" would carefully consider the relative advantages and disadvantages (including the ramifications) of the proposals being made. In this case, the "reasonable negotiator" would consider and weigh the benefits to the employees of the plans under consideration against their probable costs to the employer. I will do the same. In addition, the "reasonable negotiator" will proceed cautiously as to proposals of uncertain consequence, a matter I will discuss first.

1. Presumption Favoring Status Quo

As the District points out, arbitrators in "interests" disputes normally allow a presumption favoring the status quo when considering a proposal that has not found prior acceptance in the parties' collective bargaining agreement or in other comparable settings. In Tampa Transit Lines, Inc., 3 L.A. 194, 196 (Hepburn, 1946), the arbitrator stated:

> An arbitrator cannot often justify an award involving the imposition of entirely novel relationships or responsibilities. These must come as a result of collective bargaining or through legislation.

Similarly, Arbitrator McCoy, in Twin City Rapid Transit Co., supra at 845, stated:

> We believe that an unusual demand, that is, one that has not found substantial acceptance in other properties, casts upon the union the burden of showing that, because of its minor character or inherent reasonableness, the negotiators should, as reasonable men, have voluntarily agreed to it. We would not deny such a demand merely because it has not

> found substantial acceptance, but it would take clear evidence to persuade us that the negotiators were unreasonable in rejecting it.

E. Elkouri and F. Elkouri, How Arbitration Works, (4th ed. 1985) state, at 817:

> It is clear, however, that arbitrators will require a party seeking a novel change to justify it by strong evidence establishing its reasonableness and soundness.

Accord, Assoc. Hosp. of East Bay, supra.

I would caution against casting too heavy a burden on the party seeking change. If that were to occur, the **status quo** would be perpetuated indefinitely and interest arbitration would cease to be a viable means for resolving differences regarding employment. Nevertheless, a cautious approach to change is justified when the consequences of the change are not certain.

2. Benefit Comparison

On an objective, overall basis, the specific benefits offered by the District's WPS plan and the Union's Blue Cross plans do not differ significantly. Witnesses for the District and for the Union so testified. My own review of the benefits offered leads to the same conclusion.

There are, however, legitimate subjective considerations with respect to medical insurance benefits, and in that respect, that plan which is the product of the employees' desires, i.e., the Union plan, presumably is preferable. This desirability, in the minds of the employees, is enhanced by the Union control of the plan, which improves the likelihood for a favorable response to changes in employee desires.

Although the benefit differences are not significant, the employees' preference should be considered, and thus, the benefit comparison analysis weighs somewhat in the Union's favor.

3. Cost Comparison

There are two parts to this analysis: present costs and future costs. Although the Union might dispute the relevancy of or weight given to future costs, I cannot disregard that consideration. The reason is that although the parties' contract expires on December 31, 1988, I am persuaded by the evidence at hearing that the District is not in a position to freely "shop coverage" at the expiration of the contact. I have two reasons:

Once the Union-sponsored plan is offered pursuant to contract, its plan cannot be unilaterally withdrawn by the District. Spokane County, PERC Dec. 2167-A (1985) aff'd sub nom. Wa. St. Council of Cty and City Empl. v. PERC, Thurston Cty No. 86-2-007-8 (May 23, 1988); City of Dayton, PERC Dec. 1990-A (1984). To the extent a change in insurance carriers affects benefits, it must be bargained, and in the case of the District, if no agreement is reached, the issue must go to interest arbitration. RCW 41.56.450. This disadvantage to the District might be negated by contractual language waiving the Union's bargaining rights in the event the cost differential between the Blue Cross program and the WFCA program exceed a specified amount or percent. Nevertheless, such contractual language, if feasible, would not solve the next concern.

The evidence at hearing was persuasive that, because of its LEOFF I obligation, small size and relatively high LEOFF composition, the District cannot obtain insurance coverage on a stand-alone basis. It must go through a larger organization. Should the District offer the Blue Cross plans and then later seek to withdraw, the WFCA could be its only option. However, the present withdrawal of the District (or other WFCA members) from the WFCA program could threaten the stability of that program.

It has a enrollment of 1078, plus dependents, which is not particularly large. Given this, it is doubtful the WFCA would allow its member districts to move freely in and out of the program, at least not without substantial penalty. 2/ Given this uncertainty, the District must prudently consider both the short-term and long-term costs of the plans with which it seeks to associate. I will, therefore, examine them.

a. Current Premium Costs.

The cost-comparison evidence presented at hearing was based on stated costs for the first half of 1988. Blue Cross locked in its premium quote for six months only, reserving the right to raise its rates on July 1, 1988. 3/ The rates of the WFCA plans are locked in for one year.

A comparison of present costs shows that the Group Health plan is the least expensive. Robert Still testified, however, that employees probably would not consider a HMO as

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2. I assume, for purposes of this analysis, that if the Union's proposal prevails, all or a significant number of current WFCA program enrollees from within the District will join the Union-sponsored plan. I make this assumption for two reasons. First, although I cannot find any "exclusivity" or "100% participation" language in the current WFCA/WPS contract, I surmise this hiatus will be filled in due course. (Roswell Bond testified that the 100% participation requirement is very common, and he explained why it exists for economically sound reasons). Second, even if no such requirement comes into play, the majority of the present District enrollees are within the bargaining unit affected by this case, and, I presume, being represented by the Union, would prefer the Union-sponsored plan.

3. Lloyd Whiton, who is with the Union's plan administrator, testified that to avoid a relatively high (30%) rate increase at the beginning of 1988, Blue Cross agreed to a 25% increase, with the right to reevaluate the premium on July 1, 1988.

attractive as plans offering a broader choice of providers. Ignoring, for the moment, the possibility of a Blue Cross premium change at or near the time of this decision, the Blue Cross plans thereupon become the least expensive, at $18,339 monthly for the Prudent Buyer, and $18,681 monthly for the Traditional plan. By comparison, the WPS plan, at 100% enrollment, would cost the District $19,213 monthly. In addition, under the WPS plan, approximately $11 per active LEOFF I enrollee is contributed to the premium by the IRSRA trust.

Thus, at least prior to any premium increase, the Union-sponsored Blue Cross plans are presently the most cost competitive, and this consideration weighs in the Union's favor.

b. Future Premium Costs

This is the most heatedly contested consideration in this case. The District points to the importance of its 18-year rate history of the WFCA plan as a valuable predictor of future rates, as well as to its sizeable internal and external (IRSRA) reserves, which the Union plan lacks. The District charges that the Union plan is LEOFF I-heavy; therefore, it cannot remain competitive. The Union considers these matters too speculative to be considered. It points to the size of Blue Cross as a carrier, and argues the fact that the Union-sponsored plans have been approved by the Washington State Insurance Commissioner demonstrates the plans are adequately funded.

Perhaps the most unsettling feature of the Blue Cross program is that its present enrollment of LEOFF Is is relatively high. LEOFF Is constitute 82.6% of the enrollees, as compared to a 35.4% LEOFF I enrollment under the WFCA plan. (Enrollment of the District's employees in the Blue Cross program would reduce the LEOFF I percentage to slightly above 75%). The claims experience of three organizations sponsoring insurance plans in

which LEOFF Is are enrolled has been that LEOFF I medical costs run 34% to 80% higher than non-LEOFF Is. 4/ Thus, this consideration relating to LEOFF I enrollment supports the District's position that the Blue Cross rates may not remain competitive. In addition, the WFCA program presently has a larger total enrollment than the Blue Cross program, (1078 to 510 enrollees, approximately) which leads to a more favorable risk spread. However, I note that the Union-sponsored plan has grown relatively rapidly in terms of total enrollment. In little over a year, it is nearly one-half the size of the WFCA program.

The District's argument also is persuasive that the WFCA program's rate history weigh in its favor on the question of size and stability of future premiums. The WPS plan has had a 18-year, largely stable rate history. The District presented evidence that it has absorbed increased medical care costs as well or better than other carriers. The Blue Cross plans are new, with only a one-year rate history. Roswell Bond, an expert witness for the District, testified that new plans, including those the witness himself has underwritten, typically are "underpriced" in order to attract enrollment. After enrollment is made, the premiums are raised to a level that is more actuarially justifiable. Mr. Bond also testified that the prudent purchaser of group medical coverage should consider rate history as an indicator of future rate stability. The Union did not present evidence to rebut Mr. Bond's testimony.

Likewise, the sizeable reserves, both internal and external, of the WFCA plan, weigh in the District's favor. The IRSRA reserve, which exceeds $700,000, is the more sizeable of

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4. Under the WFCA plan, the claims experience of LEOFF Is has been 80% higher than non-LEOFF I employees. Under plans sponsored by the Washington Counties Insurance Fund, the LEOFF I claims experience has been 49% higher. The experience of the Association of Washington Cities shows LEOFF I claims being 34% higher.

the two reserves. It is used from time to time to buy down the WPS premiums. 5/ The WPS's smaller internal rate stabilization reserve also contributes to premium stability. The Blue Cross plan presently lacks reserves of this nature.

The District is further concerned that the Union's control of its plan will: 1) allow it to exclude or reduce benefits to LEOFF Is; or 2) improve benefits, thereby exerting an upward pressure on premiums.

It is true the Union's control of the plans may allow it to allocate benefits disproportionately to LEOFF IIs. This is a serious concern to the District because if the LEOFF I insurance coverage is inadequate, the District bears the costs. The problem is not cured by a ceiling on the District's premium contributions, since that ceiling necessarily applies only to LEOFF IIs. A collective bargaining agreement term requiring the same LEOFF I coverage as presently exists under the existing WPS plan is a possibility. However, it would not be binding on the Union plan sponsors, the Fire Fighters' Trust, since that organization is not a party to this proceeding or any collective bargaining agreement arising therefrom. Despite these serious concerns, I am persuaded by my June 1, 1988 discussion with panel member Hill that the Union would not manipulate LEOFF I benefits to the economic detriment of employers because this would seriously jeopardize the future marketability of its program. Therefore, it is unlikely this would occur.

The District also is concerned about unilateral across-the-board benefit improvements under a Union-controlled plan.

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5. The WFCA, through the IRSRA trustees, could perhaps, as the Union suggests, choose to buy down the premiums from some other plan instead, including the Union's Blue Cross plan. The arbitrator, however, cannot order the IRSRA trustees to do this; thus, it is not a practical consideration in this case.

Presently, the District would not be affected by the increased costs of benefits. It pays all uncovered amounts for LEOFF Is anyway, and there is a contractual ceiling on its premium contribution for LEOFF IIs. The District fears, however, that increased future LEOFF II premiums (from whatever cause), will put an "upward pressure" on the contractual ceiling. I believe there could be such an effect, although I would agree with the Union that this is somewhat speculative. Nevertheless, because the federal Internal Revenue Code exempts most health care benefits from taxation, (and for psychological reasons), employees inevitably desire to maximize their coverage. Even when insurance costs rise, they tend to expect the same level of benefits, and they look to the employer to pay. Although I cannot quantify this "upward pressure," I agree with the District that it exists.

4. Additional Considerations

The Union presented evidence that the District had procured the Donald M. Stewart report, which favored the Union-sponsored plan, and at least impliedly had agreed to abide by its recommendations. During negotiations, a District Commissioner was appointed to study the Union's plan with a Union representative. The Commissioner failed to contact and work with the designated Union representative.

The Union's evidence suggests that the District did not consistently act in good faith, or at least the District's position initially was not well thought out. Nevertheless, this being an "interests" dispute, the evidence is relevant only to the extent it challenges the credibility of the District's present position. I find, however, that the strength of the District's evidence is sufficient to overcome any such doubts.

The Union is also concerned that the WFCA's IRSRA buy-down

practices allows the District to subvert the negotiated premium ceiling in the contract. This occurs, according to the Union, because the IRSRA reserve consists of excess premiums paid, in substantial part, on behalf of bargaining unit members. But instead of returning that excess in the form of better benefits for bargaining unit members, the IRSRA fund is used to reduce the District's costs for a substantial number of non-bargaining unit members (retired and disabled LEOFF Is).

The Union's argument would have appeal if there were a negotiated **floor**, as well as a ceiling on the District's premium contribution. The contract as presently written, however, does not **require** the District to expend a certain amount of money for premiums. Rather, it prevents the District from having to spend more than a set amount. The implication is that District is free to save money wherever it can, so long as it does not change the insurance plan and benefits agreed upon in the contract. In this regard, I emphasize what I stated previously in this opinion: The District cannot (contrary to the Union's suggestion) unilaterally decrease the benefits (by changing plans or otherwise) which the bargaining unit members enjoy under their collective bargaining agreement. Spokane County, supra; City of Dayton, supra. If the District's effective premium costs are less than contemplated during negotiations, it may properly apply those savings as it sees fit, so long as there is no contractual term to the contrary and the level of benefits remain unchanged.

CONCLUSION

The Union's proposal would add something to the agreement between the parties that did not exist previously. Therefore, it seeks a departure from the status quo. It is innovative, or novel, in the sense that it is proposing a health care program that has not had any history in past contracts between the District and the Union or in contracts involving comparable fire districts.

Because of this, the Union bears the burden of persuading the arbitrator that the District was unreasonable in not agreeing to its proposal.

The decision is a close one. Both parties made thorough and competent presentations. There are valid considerations favoring the Union's as well as the District's position. I have considered the possibility that the District's sole motive for opposing the Union plan is an unfounded fear of Union "control" or an ill-advised desire to ensure the survival of a competing program. I am persuaded, however, that the District has legitimate concerns and that it was not unreasonable for it to refuse to agree to the Union proposal.

I agree with the Union's premise that a broader choice in medical plans is consistent with the intent of RCW 41.04.180, but I do not believe that intent goes beyond the two-plan requirement when additional cost considerations are present. Although the Union has presented a program having comparable or better benefits, as well as competitive premium rates for the first half of 1988, the evidence is not convincing that the rates probably will remain competitive for the near or long term. The most serious problems are the relatively high current LEOFF I enrollment in the Blue Cross plans and the lack of reserves and rate histories for those plans.

Although this arbitration concerns only employees in the uniformed bargaining unit, the cost of providing them medical insurance is inextricably bound to the costs of medical insurance for non-bargaining unit people, particulary retired and disabled LEOFF Is. Since the employer pays the bill, the total economic impact must be considered. Given its LEOFF I obligations and the rapidly escalating costs of medical insurance and medical care, the District' cautious approach is justified.

I have considered whether the District's concerns could be alleviated by carefully drafted contract language. There may be some possibilities, but none are clear or appropriate for an interest arbitration award. It is something that is best left to the negotiation process.

AWARD

The proposal of the District is granted; the proposal of the Union is denied.

June 9, 1988

Jane R. Wilkinson
Neutral Arbitrator