BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
SHOREWOOD FIRE FIGHTERS LOCAL 808, IAFF, AFL-CIO	Case 39 No. 43826 MA-6082
and	
VILLAGE OF SHOREWOOD (FIRE DEPARTMENT)	

Appearances:

Lawton & Cates, S.C., 214 West Mifflin Street, Madison, Wisconsin 53703-2594, by Mr. Richard V. Graylow, appearing on behalf of the Union.

Davis & Kuelthau, S.C., 111 East Kilbourn Avenue, Milwaukee, Wisconsin 53202-6613, by Mr. Roger E. Walsh, appearing on behalf of the Employer.

ARBITRATION AWARD

Local 808, Shorewood Professional Fire Fighters Union, AFL-CIO, hereafter the Union, and Village of Shorewood (Fire Department), hereafter the Village or Employer, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances arising thereunder. The Union, with the concurrence of the Employer, requested the Wisconsin Employment Relations Commission to appoint a staff member as single, impartial arbitrator to resolve the instant grievance. On February 8, 1991, the Commission designated Coleen A. Burns, a member of its staff, as Arbitrator. Hearing was held on March 27, 1991 in Shorewood, Wisconsin. The record was closed on June 28, 1991, following receipt of the parties' post hearing written argument.

ISSUE

The Union proposes the following issue:

Did the Employer violate the following portions of the parties' 1987-88 collective bargaining agreement:

1. The top, unnumbered paragraph on page 2, and/or
2. Paragraph No. 29 on page 29?

If so, what remedy is appropriate?

The Employer proposes the following issue:

> Did the Village violate Section 1 or Section 29 of the collective bargaining agreement by not granting the Firefighter's February 5, 1990 request for increases in wages and holiday pay equal to those granted to the Shorewood Policemans Protective Association in the Police Officers 1989-90 collective bargaining agreement?
>
> If so, what is the appropriate remedy under the collective bargaining agreement?

The undersigned adopts the Employer's statement of the issue.

RELEVANT CONTRACT PROVISIONS

Section 1. Wages

> The salary scale established under this contract will maintain the same pay structure with comparable positions in the Police Department bargaining unit.
>
> Comparable positions are as follows:

Fire Department	Police Department
Firefighter	Patrolman
Equipment Operator	Investigator
Lieutenant	Detective,
Sergeant	

. . .

Section 19. Grievance Procedure

> A grievance is defined hereunder as an express violation of the provisions of the contract entered into between the VILLAGE and the ASSOCIATION for the year 1987 and the provisions of previous agreements between the VILLAGE and the ASSOCIATION, which are still in effect.
>
> Any grievance as defined hereunder which may arise between the VILLAGE and the ASSOCIATION or a member thereof shall be handled in the following manner:
>
> . . .
>
> Step 5. If the grievance is not settled at Step 4, the provisions of Sec. 111.70(4) (c) Wis. Stats., related to mediation and arbitration shall be available to the parties for the purpose of settling the grievance. Any costs incurred thereunder shall be shared equally between the VILLAGE and the ASSOCIATION.

Costs referred to hereunder are applicable only to the expense of hiring a mediator or arbitrator. The VILLAGE and the aggrieved party or the ASSOCIATION shall be responsible for their own attorney fees and similar expenses.

. . .

Section 29. Previous Benefits

All benefits received under prior contracts which both parties to this contract agree are intended to be of a continuing nature, are incorporated herein by reference and made a part hereof as if fully set forth herein.

. . .

Section 30. Future Negotiations and Termination

Negotiations for the year 1989 shall commence at least 90 days prior to the termination date of this contract. The terms of this Agreement shall remain in full force and effect during the period of negotiation and until notice of termination of Agreement is provided to the other party in the manner set forth in the following paragraph.

In the event that either party desires to terminate this Agreement, written notice must be given to the other party not less than 10 days prior to the desired termination date which shall not be before the 31st day of December 1988.

Section 31. Finality of Contract

The provisions set forth in this contract cover the period of January 1, 1987 through December 31, 1988 and are final except as otherwise provided hereinafter. This contract is not subject to modification, alteration, or amendment except as may be mutually agreed upon by the parties hereto in writing. The terms, conditions and provisions set forth in this contract are to be considered the entire contract.

. . .

Section 32. Separability

Should any paragraph, section or portion thereof of this Agreement be held unlawful and unenforceable by any Court of competent jurisdiction, such decision of the court shall apply only to the specific paragraph, section or portion thereof directly specified in the decision; upon the issuance of such decision the parties agree immediately to negotiate a

substitute for the invalidated paragraph, section, or portion thereof.

BACKGROUND

On July 5, 1989, the Employer ratified the 1989-90 collective bargaining agreement between the Employer and the Shorewood Policemans Protective Association. At that time, and at all times material hereto, the parties have been in the process of negotiating an agreement to succeed their 1987-88 agreement. On February 5, 1990, the Union by its President, Kurt A. Schanz, requested that the Employer implement the wage benefits and holiday benefits which had been negotiated with the Policemans Protective Association for the contract years 1989 and 1990. The Employer denied the Union's request. A grievance was filed and, thereafter, processed to grievance arbitration.

POSITIONS OF THE PARTIES

Union 1/

Since January 1st of 1978, the Union has had identical (monthly, and thus annual) wage parity with the Employer's Police Association. The Union has received wage parity under a well established and contractually explicit arrangement. While the language of Section 1 deals mainly with base wages between the respective unionized associations, the original intent of the parity language was to impart identical "overall" economic packages to both entities.

The wage parity has always been administered by the Employer within the exact boundaries of the language's explicit and implied intent. It has been used by the Employer to limit salary adjustments for the Fire Fighters to that for which the Police Association had settled first. The Employer has also applied the parity principle to benefits, in that it has taken away union salary gains which were negotiated above and beyond, as well as prior to, Police settlements. This occurred in 1976, and gives additional credibility to the Union's assertion that the wage parity principle was recognized and utilized by the Employer prior to contract year 1978, when more precise parity language was incorporated into the agreement.

In 1976, the Union settled its contract with the Employer in June of 1976 and received an 8% salary adjustment above the previous year. No other significant economic benefits were granted to the Union. In August of 1976, the Employer settled with the Police Association at a wage adjustment of 7 1/2% and an additional 3 1/2 holidays in pay. Thereafter, the Employer took measures to enforce the full extent and intent of the parity principle by reducing the Fire Fighters' wages by one-half percent, citing contractual requirements of same pay as police department in comparable positions. This conduct by the Employer prompted the Union to develop and negotiate into the collective bargaining agreement the following language:

> "In the event that the economic package given the Police Department bargaining unit reflects increases in holidays, vacation or hospitalization coverage, in lieu of wage increases, said increases

1/ The Union, in its reply brief, relied upon documents which were attached to the Union's reply brief, but which were not entered into the record at hearing. With one exception, Village Ordinance No. 1554, which, as the Union argues, is subject to judicial notice under Sec. 902.03, Wis. Stats., such documents have not been considered by the Arbitrator.

shall be granted to all Fire Department employees within the bargaining unit."

This language was contained in contract years 1978-1980 inclusive.

While the Employer claims that this language disappeared from the 1981 contract because it was bargained away, the testimony of Union witnesses demonstrates that the Village Attorney confirmed the continued existence of the language in question by assuring coverage through the contract's "previous benefits" clause. Since that time, the two unions have received similar increases in hospitalization and vacation benefits.

Due to the varying work schedules between the Union and the Police Association, identical changes in vacation benefits are nearly impossible to effect. However, the "overall" vacation improvement for one unionized protective body has been mirrored by similar gains for the other entity in the same contract. Thus, for the Union to request similar "equal" treatment with respect to holiday payments (i.e. at time and one-half the employe's hourly rate) is consistent with past conduct.

The Union's claim of parity treatment is further supported by the fact that the Employer has given the Police Association parity pay with the Fire Fighters when events were such that the Fire Fighters settled for higher salary adjustments than the previously settled Police Association. Such was the case in contract year 1980. When the Union has negotiated for "higher than Police" wages, the Employer's reaction has been to reduce fire fighter wages downward to that of police or to raise police wages upward to fire fighter levels, always with the intent and effect of maintaining "parity" between the two departments. The Union is asking that the same treatment be applied in its favor.

The current Village Manager was not associated with the Employer at the time that parity was developed and included in the labor agreement. Thus, the Village Manager, unlike the Union's witnesses, does not have an historical perspective.

According to the Village Attorney, the Employer has never implemented wage raises prior to the time that an agreement was settled. If that is the case, why is it that, during the course of the 1989-90 Police Association negotiations, the Employer issued wage increase retroactivity pay checks almost a full month before the contract was "executed." Village Ordinance No. 1554 dated May 15, 1989, in which General Classification employes received a salary adjustment prior to any represented employes' negotiated settlements with the Employer, lends additional support to the Union's claim that the Employer has in the past taken measures to provide wage increases prior to contract settlements. The Village Attorney is either unsure about the various facts related to this case, or is attempting to deny these facts.

Previously, there were relatively short intervals, of several months duration, between the settlements of the Union and the Police Association contracts. Thus, no need ever existed for the Union to seek "parity pay" advancements. In this case, almost two years have elapsed. The Union's request for equal treatment of wage adjustments prior to settling a complete agreement is not a new concept. The Employer has, in the past, made similar voluntary adjustments to other internal employe groups.

Each time the Union and the Employer negotiated an agreement, the Village Attorney directed the authorship of this labor agreement. When the parties had discussions concerning the 1981-82 labor agreement, the Village Attorney admitted that he removed the language in an attempt to cleanse the document of

excess language. He then reassured Union President Schanz that those "other economic package benefits" were attainable by virtue of the "previous benefits" section of the contract. At no time during the course of the hearing on March 27, 1991, did the Village Attorney ever deny that the crucial conversation took place. He only stated that he was unable to recall such a conversation.

The Employer's argument that the Fire Fighters did not want the "economic benefits" parity clause is without merit. The language is totally beneficial to the Fire Fighters and there is no downside risk.

The Employer argues that the Arbitrator should dismiss any Union attempt to grieve its case based on the "previous benefits clause" since no such claim was initially referred to by the Union in its correspondence either to the Employer or to the Wisconsin Employment Relations Commission. If there is merit to the claim that arguments not first raised before the Employer are not to be considered before the Arbitrator, then let it be applied against the Employer as well. The Employer never objected to the Union's testimony at the time of the hearing and it never challenged the Union's allegation of a violation of the Previous Benefits Clause. The Union submits that objections which are not timely and specifically raised at hearing, are waived.

If the Employer can take past actions, i.e., lower fire fighter wages in 1976 or raise police wages in 1980 to achieve parity when it deemed beneficial to do so, then it should also be required to take the necessary (and appropriate) action to effect current parity between police and fire. The Union continues to perform the duties and responsibilities which prompted the initiation of the wage parity. By not implementing the wages at the levels and at the time periods provided the police, and by not implementing the time and one-half payment for holidays, the Employer has violated Section 1 and Section 29 (Previous Benefits) of the labor agreement.

The Union is asking that the Employer implement the wages paid to members of the Union to reflect base wage parity with the Police Association as per the 1989-90 raises. This would include "effective dates of implementation" for all salary adjustments during the contract years in question.

The Union is also asking that the Employer immediately reimburse Union members for past holidays taken (either in pay or in time off) at time and one-half rates adjusted to the appropriate 1989-90 pay rate levels. Further, for those union members who chose to take their 1989 and 1990 holidays in time off, the Employer should be instructed to make the necessary pay adjustments to reimburse them financially for the irretrievable time which has elapsed for the years 1989 and 1990.

Employer

In 1978, the Fire Fighters settled a two year contract covering 1978 and 1979. The Fire Fighters demanded and obtained a "parity clause" protecting them from the 1976 type settlement by the police officers which resulted in an economic loss for the Fire Fighters. The 1980 contract between the parties contained the identical "parity clause." In the 1982-82 contract, the following language was deleted from the original "parity clause":

> In the event that the economic package given the Police Department bargaining unit reflects increases in holidays, vacation or hospitalization coverage, in lieu of wage increases, said increases shall be granted to all Fire Department employees within the bargaining unit.

Now the only parity referred to in Section 1 is wage parity.

The Fire Fighters settled their 1981-82 contract after the police settled their 1981-82 contract. Since the Fire Fighters were aware of the police settlement before the Fire Fighters settled with the Employer, the Fire Fighters no longer needed the "economic package" parity clause.

The Union never asked that the "economic benefits" clause be reinserted in any of the three contracts that were negotiated subsequent to the 1981-82 contract. The Fire Fighters did not want the "economic benefits" parity clause after the 1981-82 contract because such a clause might have been used against the Fire Fighters when they negotiated an additional holiday in the 1983-84 contract and two additional holidays in the 1985-86 contract.

In the 1987-88 contract, both unions negotiated different holiday pay benefits with the Employer. There was no claim by the Fire Fighters that, on the basis of some economic package parity, they were entitled to a greater holiday pay benefit.

At hearing, the Union conceded that, in the Union's initial demand on February 5, 1990 and in the Union's February 27, 1990 grievance, the Union alleged only that the Employer had violated the "parity clause" which was contained in Section 1 and that there was no reference in these two documents to the "previous benefits provision" in Section 29. It is axiomatic that allegations or arguments first raised at hearing before the grievance arbitrator are not to be considered.

The "previous benefits clause" was first included in the parties' 1972 contract and listed six previous benefits. By 1974, the "previous benefits clause" had been revised and all of the benefits previously listed were incorporated into the main body of the contract. The language of the 1974 "previous benefits clause" has remained in all subsequent contracts.

When the six benefits were incorporated into the main body of the contract in 1974, the "previous benefits clause" was significantly revised and referred only to "benefits received under prior contracts which both parties to this contract agree are intended to be of a continuing nature." The Employer does not agree that the 1980 "economic package parity clause" is "intended to be of a continuing nature." The "previous benefits clause" is not applicable to the instant dispute.

The Village Attorney testified that the Union has never received any wage increase until the new contract was ratified by both parties. This was true even if the police officers settled their new contract first and the fire fighter contract contained the "parity clause" in Section 1. The Fire Fighters never before attempted to obtain a pay increase just because the police officers had reached agreement with the Employer.

The purpose of the parity clause was to prevent the police officers from obtaining a higher wage rate at a time when the Fire Fighters contract was not open for negotiations, and at a time when the Fire Fighters would have been powerless to insist that its wage parity with the police officers be continued. However, when the Fire Fighters are bargaining on the same time period schedule as police officers, the "parity clause" is not as significant.

Nothing prohibits the Fire Fighters from attempting to obtain a higher wage rate than the police officers. This is especially true when the police officers have settled their contract and the Fire Fighters are still negotiating with the Employer. The police contract does not contain a "parity clause."

The Union claims that the 1987-88 contract "was in full force and effect during all times material hereto." That is not the case. The 1987-1988 contract expired on December 31, 1988 pursuant to Section 31.

The provisions of Section 30 which indicate that "the terms" of the 1987-88 contract "shall remain in full force and effect during the period of negotiation", is nothing more than a restatement of the law that the Employer must continue the status quo during the hiatus period. Even if Section 30 could be interpreted to actually extend the contract itself, the extension could not exceed a period of three years, since it would then be in violation of

Section 111.70(3)(a)(4), Wisconsin Statutes. Thus, the 1987-88 contract can not be extended past December 31, 1989. The Union's February 5, 1990 demand was clearly beyond even an extended term of the 1987-88 contract.

In the interest arbitration proceedings, the Employer's percentage wage increase is the same as that granted to the police officers. The Employer, however, has altered the timing of those wage increases. The Employer's offer also makes the "parity clause" inoperative during the term of the 1989-90 contract. Holiday pay issue is also a disputed item in the 1989-90 interest arbitration proceedings.

The Union is attempting to obtain through grievance arbitration that which it may not be able to obtain in negotiations. Depending on the decision of the interest arbitrator, the wage schedule and the holiday pay provisions for the period beginning January 1, 1989, may be different from the wage schedule and the holiday pay provisions that the Union seeks herein.

It should be clear that the wage parity and previous benefits clause can have no impact after the expiration date contained in the contract. The logical conclusion of the Union's position would be to forever preclude the Union or the Employer from changing the wage and fringe benefit relationships since as soon as the police officers settle, all negotiations would be over and the wage rates and fringe benefits would be set for the duration of the police officers' contract. Such a conclusion makes absolutely no sense. If the Employer had dared to insist on that scenario, the Fire Fighters would have rushed to file a prohibited practice complaint against the Employer alleging that the Employer had unlawfully refused to bargain with the Fire Fighters union over the terms of the successor contract.

The word "parity" does not appear in the 1987-88 contract. As argued by the Union, parity "does not mean identical but only equivalence." Under the Employer's final offer, the Union wage rates at the end of 1989 and at the end of 1990 will be the same as those for comparable police officers positions. Because the Employer's final offer defers the effective date of two of the wage rate increases, the Employer is not proposing an identical wage rate structure. The Employer, however, is proposing the equivalent wage rate and, in doing so, is maintaining parity. None of the quotations or cases cited by the Union support the position that they are entitled to wage increases during the hiatus period merely because the police officers have settled their contract.

Section 1 does not deal "mainly" with base wages as the Union argues. It deals "only" with base wages. If the original intent was to "overall impart identical packages", the Fire Fighters have repudiated that intent by refusing to accept the same health insurance concessions agreed to by the Police Officers.

Union counsel has attempted to present new evidence in his brief after the hearing has been closed. This attempt is improper and must be rejected. The evidence should have been entered at hearing, so that it could be subject to cross examination and rebuttal.

On one hand the Union claims that it was assured by the Village Attorney that the "previous benefits" clause would cover any of their claims for equal treatment with the police on vacation, hospital and vacations, while on the other hand, the Union is totally repudiating the applicability of the "economic package" parity clause and the "previous benefits" clause when it comes to the issue of "health insurance" parity. It is precisely because of this inconsistency that it is clear that the previous benefits clause does not apply to the holiday pay provision.

The reason that the Village Attorney does not recall the conversation is that it never occurred. When the Union President first filed his grievance, he was under the impression that the holiday parity was still contained in Section 1. When it was brought to his attention that it was removed in the 1981-82 contract, he had to manufacture an explanation. Thus, he concocted the discussion with Meyer regarding the previous benefits clause.

If the Union had wanted the "economic package" parity clause to continue in effect, it had several opportunities, including the negotiations for the 1989-90 contract, to correct the oversight, if it indeed was really an oversight. The Employer submits that the removal of the clause was not an oversight.

The Union's attempt to show some type of vacation parity does nothing more than substantiate the Employer's position that since 1981, changes in fringe benefits for Fire Fighters occurred only through negotiation and not by virtue of some automatic entitlement because the police officers were granted an increase in that fringe benefit. Even though the police officers obtained their vacation improvements in 1985, rather than in 1986 as the Fire Fighters agreed to, the vacation provisions were not changed in the amended 1985-86 fire fighter contract.

The Union's chart shows that in 1988, police officers had the eligibility requirements for the fifth week of vacation lowered and received additional days of vacation for 18, 19 and 21 years of service. Fire Fighters made no claim for "parity" treatment in 1988; they filed no grievance; they made no request for vacation changes for the 1989-90 contract; and they did not include these vacation improvements in their current grievance. Clearly, there is no vacation parity and there is no insurance parity, nor has there been any such claim made by the Union.

The Fire Fighters are currently rejecting health insurance parity. The conclusion must be drawn that since 1981, there has been no "economic package" parity. Changes in holiday pay provisions must be negotiated, just as are changes in vacations and health insurance.

This is not a grievance arbitration issue, this is an interest arbitration issue. Confusion and chaos would reign if the interest arbitrator selected the Employer's final offer, with its differing effective dates for the various wage increases, and the grievance arbitrator orders the Employer to make the wage rate increases effective on the dates granted to the police officers. The grievance must be denied.

DISCUSSION

At the time of the arbitration hearing, the 1987-88 collective bargaining agreement was the last agreement to have been executed by the parties. The parties had not been successful in negotiating a successor agreement and were awaiting an interest arbitration award from Arbitrator Kerkman. 2/

Section 30 of the 1987-88 collective bargaining agreement provides as follows:

2/ After the close of the record, Arbitrator Kerkman issued the interest arbitration award. The Employer requested that the record be reopened to admit the Kerkman Award. The Union objected to this request and the record was not reopened.

> Negotiations for the year 1989 shall commence at least 90 days prior to the termination date of this contract. The terms of this Agreement shall remain in full force and effect during the period of negotiation and until notice of termination of Agreement is provided to the other party in the manner set forth in the following paragraph.
>
> In the event that either party desires to terminate this Agreement, written notice must be given to the other party not less than 10 days prior to the desired termination date which shall not be before the 31st day of December 1988.

The Employer argues that Section 30 was intended to be nothing more than a restatement of existing law, i.e., that the Village must continue the status quo during the contract hiatus period. Section 30, however, does not reference a status quo law, or any other external law. As reflected in the plain language of Section 30, the section provides a mechanism for continuing the terms of the parties 1987-88 agreement during the period in which the parties negotiate a successor agreement.

As set forth in Section 31, the provisions of the 1987-88 contract are effective from January 1, 1987 through December 31, 1988. Since Section 30 recognizes that the contract cannot be terminated before December 31, 1988, it follows that the "period of negotiation" for the successor agreement cannot commence prior to December 31, 1988. Logically, the "period of negotiation" ends when the parties are subject to a successor agreement.

At the close of the record, the parties were awaiting an interest arbitration award which would determine terms and conditions of the parties' 1989-90 agreement. The undersigned is satisfied that, at all times material hereto, the parties were in the "period of negotiation" of an agreement to succeed the 1987-88 agreement.

The Employer argues that if Section 30 were intended to extend the terms of the 1987-88 contract, as opposed to merely maintaining the statutory status quo, such an extension could not exceed a period of three years because such an extension would be in violation of Sec. 111.70(3)(a)4, Wis. Stats. The Employer does not identify which, if any, of the contract provisions provides the undersigned with the authority to interpret and apply external law.

It is generally recognized that the jurisdiction of a grievance arbitrator is defined by the terms of the collective bargaining agreement. Section 19, Grievance Procedure, defines a grievance as "an express violation of the provisions of the contract". Section 32, recognizes that paragraphs, sections, or portions of the contract may be held to be unlawful and unenforceable "by any Court of competent jurisdiction". Construing these two provisions as a whole, the undersigned concludes that the parties intended questions of law, such as is raised by the Employer's Sec. 111.70(3)(a)4 claim, to be decided in a forum other than grievance arbitration.

Neither party argues, and the record does not demonstrate, that either party terminated the 1987-88 agreement in accordance with the provisions of Section 30. Giving effect to Section 30, the undersigned concludes that the terms of the 1987-88 agreement, including Sections 1 and Sections 29, remained in full force and effect at all times material hereto.

The Union argues that Section 29 of the labor contract imposes a parity requirement which obligates the Employer to provide the Union with the improved holiday benefit, i.e., payment of time and one-half for holidays, which the Policemen's Protective Association received in their 1989-90 agreement. The

Employer responds, inter alia, that the Union's Section 29 claim was not presented to the Employer prior to hearing and, thus, the arbitrator does not have jurisdiction to decide the Union's Section 29 claim.

The issue raised by the Employer's argument is one of procedural arbitrability. Issues of procedural arbitrability must be raised prior to the close of the evidentiary record so that each party may be afforded an opportunity to fully litigate the issue. Although the Employer had notice of the Union's Section 29 claim at hearing, the Employer's objection to the Section 29 claim was raised for the first time in post-hearing brief. Since the Employer did not raise its objection in a timely manner, the Employer has waived its right to argue that the undersigned lacks jurisdiction to decide the Union's Section 29 claim.

As the testimony of Motor Pump Operator David Kraemer establishes, the Union achieved wage parity with the Police unit in 1978. Section 1 of the parties 1978-79 contract, which provided both wage and benefits parity, contained the following language:

> Commencing January 1, 1979, and for the second year of this contract, all bargaining unit classifications of the Fire Department shall receive a percentage increase necessary to maintain the same pay structure with comparable positions in the Police Department bargaining unit. In the event that the economic package given the Police Department bargaining unit reflects increases in holidays, vacation, or hospitalization coverage, in lieu of wage increases, said increases shall be granted to all Fire Department employees within the bargaining unit.

Comparable positions as indicated above shall be as follows:

Fire Department	Police Department
Firefighter	Patrolman
Equipment Operator	Investigator
Lieutenant	Detective Sergeant

The second sentence of the first paragraph cited above, hereafter referred to as the "benefits parity" language, was continued in the parties' 1980 agreement. Union President Schanz, who was involved in the negotiation of the 1981-82 agreement, recalls that, when the Union reviewed the 1981-82 contract settlement, the Union noticed that the "benefits parity" language had been deleted from the contract. Schanz further recalls that he subsequently discussed this deletion with the Employer's bargaining representative, Village Attorney Alvin Meyer, and was assured by Meyer that the benefits conferred by the deleted language would continue under the contracts' "previous benefits" clause. 3/

Motor Pump Operator David Kraemer, who has been an Officer in the Union since 1980, confirmed that the Union had requested Schanz to ask Meyer why the "benefits parity" language had disappeared from the 1981-82 contract. Meyer could not recall discussing the deletion of the "benefits parity" language with Schanz.

3/ The "previous benefits" clause is contained in Section 29 of the parties' 1987-88 agreement and is identical to the "previous benefits" clause contained in Section 29 of the parties' 1981-82 contract.

At hearing, the Union introduced the minutes of a May 12, 1981 Union meeting which contained the following statement: "Motion - to ratify 1981-82 proposed contract pending nothing is hidden concerning our parity with vacation, hospital + holidays. Seconded. Carried." Inasmuch as the language deleted from Section 1 of the 1981-82 contract involved vacation, holidays and hospitalization coverage parity, the minutes support Schanz' testimony that the deleted language was a subject of concern to the Union at the time that the Union reviewed the proposed 1981-82 contract settlement.

Neither Meyer's testimony, nor the other record evidence, provides a basis for discrediting Schanz' testimony concerning his discussion with Meyer. Crediting Shanz' testimony, the undersigned is persuaded that, when the parties negotiated their 1981-82 contract, Meyer assured the Union that the benefits conferred by the deleted "benefits parity" language would continue in effect under the 1981-82 contract's "previous benefits" clause. Since Meyer was the Employer's bargaining representative, Meyer's assurance to Schanz is binding upon the Employer and entitled to be given effect until such time as the parties' negotiate an agreement to the contrary. The record does not demonstrate that the parties subsequently negotiated an agreement to the contrary.

In summary, the undersigned concludes that the benefits conferred by the deleted "benefits parity" language continued in effect under the provisions of Section 29 of the parties' collective bargaining agreement. As discussed above, the provisions of Section 29, as well as those of Section 1, continued in effect pursuant to Section 30 of the parties 1987-88 agreement. To be determined, is whether the Union is correct when it argues (1) that Section 29 provides the Union with the right to receive the holiday improvement of the 1989-90 Police unit settlement and (2) that Section 1 provides the Union with the right to receive the wages of the 1989-90 Police unit settlement.

At the time that the parties executed their 1978-79 agreement, the Police unit was covered by a 1977-78 agreement. Thus, the 1979 contract for the Police unit was subject to negotiation at a time when the Union had settled upon the terms of its 1978-79 contract.

Section 1 of the 1978-79 agreement, which provided both wage and benefits parity, stated as follows:

> Commencing January 1, 1979, and for the second year of this contract, all bargaining unit classifications of the Fire Department shall receive a percentage increase necessary to maintain the same pay structure with comparable positions in the Police Department bargaining unit. In the event that the economic package given the Police Department bargaining unit reflects increases in holidays, vacation, or hospitalization coverage, in lieu of wage increases, said increases shall be granted to all Fire Department employees within the bargaining unit.

Comparable positions as indicated above shall be as follows:

Fire Department	Police Department
Firefighter	Patrolman
Equipment Operator	Investigator
Lieutenant	Detective Sergeant

The first sentence of the paragraph contains language which expressly provides

that the wage parity language is effective in 1979, the second year of the contract. By providing wage parity in the second year of the agreement, the parties demonstrated an intent to provide parity protection for the period of time in which the Union, but not the Police unit, had settled upon the terms of a contract.

The second sentence of the paragraph, unlike the first sentence, does not expressly limit the "benefits parity" to the second year of the contract. Clearly, however, the "economic package given the Police Department" includes both wages and benefits. It follows, therefore, that the protection provided by the "benefits parity" language was intended to be effective during the same period of time as the protection provided by the wage parity language, i.e., the second year of the contract. Such a conclusion is consistent with Schanz' testimony at hearing, wherein he stated that the "benefits parity" language was "probably" inserted into the 1978-79 contract to provide protection for the 1979 contract year. Such a conclusion is also consistent with the evidence of the parties' bargaining history.

After the Union had settled its 1976 contract, the Employer and the Police unit settled a contract for 1976 in which the Police unit, in exchange for other economic benefits, received a lower wage increase than the Union. Thereafter, the Employer deducted monies from the wages of the Union's bargaining unit members to "conform to contract requirement of same pay as Police Department in comparable positions..." 4/ The parties agree that the "benefits parity" language was negotiated into the 1978-79 agreement in reaction to the events of 1976. 5/

The language of the provision, as well as the evidence of bargaining history, persuades the undersigned that, at the time the parties negotiated the wage and benefit parity language into Section 1 of the 1978-79 contract, the parties intended to provide a mechanism for maintaining wage and benefit parity with the Police unit during the period of time in which the Union, but not the Police unit, had settled upon the terms of a contract. The evidence of

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4/ Employer Exhibit #4. Since the 1976 contract was not introduced into evidence, the record does not reveal the contract language which was relied upon by the Employer.

5/ The parties settled their 1977 contract after the Police and the Employer had reached agreement on their 1977-78 agreement.

subsequent practices does not demonstrate a contrary intent.

Assuming arguendo, that the 1989-90 Police unit settlement provided an economic package that "reflects increases in holidays, vacation, or hospitalization coverage, in lieu of wage increases", Section 29 does not require the Employer to provide the Union with such increases. 6/ The reason being that the 1989-90 Police settlement did not occur during a period of time in which the Union had settled upon the terms of a contract. Rather, the Police unit settlement occurred at a time in which the Employer and the Union were free to negotiate and agree upon the Police unit settlement, or any other settlement.

6/ The Police executed their 1989-90 agreement on October 23, 1989. The Police received split increases in each of the two contract years. In 1989, the splits were 3.625% and .75%, and in 1990, the splits were 3.25% and 1.5%. The Employer's Final Offer to the Union contained the same split increases. However, the increases were not implemented on the same dates as the Police increases. At the end of the contract term, Fire Fighters would receive the same base wage as the comparable positions in the Police unit, but as a result of the different implementation dates, the Fire Fighter would receive fewer dollars over the term of the contract. Since the Police settlement generated more wages than the Employer's Final Offer to the Union, it is not evident that the Police Unit has received the increase in the holiday benefit "in lieu of wage increases".

The Section 1 language relied upon by the Union states as follows: The salary scale established under this contract will maintain the same pay structure with comparable positions in the Police Department bargaining unit." For the reasons discussed above, the undersigned is persuaded that the wage parity language contained in Section 1 was intended to provide a mechanism for maintaining wage parity with the Police unit during the period of time in which the Union had settled upon the terms of a contract. Accordingly, the undersigned construes the words "this contract" to mean the "1987-88 contract" and concludes that the language of Section 1 provides a mechanism for maintaining wage parity between the Police and Fire units for the 1987-88 contract years, but does not require the Employer to implement the 1989-90 Police unit wage settlement.

Based upon the above and foregoing, and the record as a whole, the undersigned issues the following

AWARD

1. The Village did not violate Section 29 of the collective bargaining agreement by not granting the Firefighter's February 5, 1990 request for increases in holiday pay equal to those granted to the Shorewood Policemans Protective Association in the Police Officers 1989-90 collective bargaining agreement.

2. The Village did not violate Section 1 of the collective bargaining agreement by not granting the Firefighter's February 5, 1990 request for increases in wages equal to those granted to the Shorewood Policemans Protective Association in the Police Officers 1989-90 collective bargaining agreement.

3. The grievance is denied and dismissed.

Dated at Madison, Wisconsin this 28th day of August, 1991.

By _____
Coleen A. Burns, Arbitrator

CAB/sh
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