IN THE MATTER OF THE ARBITRATION

Between

NEW BERLIN PUBLIC EMPLOYEES,
LOCAL 2676, AFSCME, AFL-CIO

and

CITY OF NEW BERLIN

Case 96 No. 57446
Int/Arb 8713
Dec. No. 29683-A

Appearances:	For the City:	Roger W. Walsh, Esq. Davis & Kuelthau
	For the Union:	Jeffrey J. Wickland Staff Representative

DECISION AND AWARD

The undersigned was selected by the parties through the procedures of the Wisconsin Employment Relations Commission. A hearing was held on January 25, 2000. The parties were given the full opportunity to present evidence and testimony. At the close of the hearing, the parties elected to file briefs and reply briefs. The arbitrator has reviewed the testimony of the witnesses at the hearing, the exhibits and the parties' briefs in reaching his decision.

ISSUES

The parties reached agreement on most of the terms to be included in the successor agreement. All of the tentative agreements are incorporated into this

Award. There are two outstanding issues: health insurance and shifts for Records Technicians.[1] The parties propose the following:

CITY

Section 12.01 Health Insurance

A. Revise the first paragraph to read:

Employees may select single or family health insurance coverage. Employees shall contribute fifteen dollars ($15.00) per month toward the monthly premium with the balance to be paid by the City. The City has the right to change carriers for its standard health insurance plan provided the coverage is fundamentally equivalent to the health insurance standard established in Section 12.02 of this Agreement, and there is no lapse of coverage. In the event an employee has a spouse that is also a City employee, that employee and the employee's spouse will be entitled to only one family health insurance contract between them from the City.

b. Create Section 12.02 Health Insurance Standard Plan/Out-of-Pocket Costs:

The City's standard health insurance program will be the Blue Cross/Blue Shield Tradition Plus PPO and non-PPO that was in effect on January 1, 1994, with a two-hundred dollar ($200) per person, four hundred dollar per family deductible, and 80%/20% co-insurance provision, and an annual out-of-pocket maximum payment of six hundred dollars ($600) per person and twelve hundred dollars ($1,200) per family. The specific provisions of the Blue Cross/Blue Shield Tradition Plus plan are as listed in the plan document.

c. Renumber existing Sections 12.02 and 12.03 and Sections 12.03 and 12.04.

d. Revise paragraph A of Appendix B to read:

It is mutually agreed, that the PrimeCare Plus program outlined in the original plan document dated and initialed by the parties satisfies the fundamentally equivalent requirements of Section 12.01 of this Agreement.

This benefit shall no longer be supplemented as provided by the arbitration award rendered by David E. Shaw dated April 9, 1996.

[1] The parties reached agreement at the hearing that they would delete the current second paragraph of Section 9.03 (B). They also agreed to amend Section 16.01. Those agreements are also incorporated into this Award.

Any changes made in health insurance carriers during the length of this Agreement shall be required to meet the standards set forth in Section 12.01, unless mutually agreed to otherwise.

Shift Proposal
No Change from existing language

ASSOCIATION

Health Insurance
Delete from 1st sentence of Section 12.01 "… and shall pay the full premium cost of the single plan for single employees and the family plan for employees with dependents."

Amend second sentence of Section 12.01 to read " Employees shall pay fifteen dollars ($15.00) per month for a single or family health insurance plan."

Shit Proposal
Amend Article 9.03 Part B to read:

1. Workweek to include reference to Records Technician hours as follows: "The workweek and workday for the Records Technician shall be: One employee Monday through Friday from 7:00 a.m. to 3:30 p.m.; one employee Sunday through Thursday from 8:00 a.m. to 4:30 p.m.; one employee Monday through Friday from 3:30p.m. to midnight; and one employee Tuesday through Saturday from 4:30 p.m. to 1:00 a.m.

BACKGROUND

The City of New Berlin, hereinafter referred to as the City, is located in Southeast Wisconsin. The City has three bargaining units. One bargaining unit consists of the Police and is represented by the Professional Police Association. A second unit is comprised of employees of the Department of Public Works and is represented by the Teamsters Union. Both of those bargaining units voluntarily settled their current agreements. The third bargaining unit is represented by AFSCME, Local 2676, hereinafter referred to as the Association. There are

currently 46 employees in the bargaining unit. This unit contains the "office-clerical, technical, and related occupational positions, professional library employees and craft employees." Within the clerk category, there are several classifications. They include Clerk Typist, Receptionist-Clerk Typist, Clerk and Police Clerk. The agreement contained a work schedule for the Clerk Typists. Section 9.03(B) of the party's agreement stated that "The workweek and workday for Clerk-Typist shall be from Monday through Friday from 7:00 a.m. to 3:30 p.m. with an unpaid one-half hour for lunch." The Association's final proposal deleted this provision. At the hearing, the parties agreed to the deletion.

The Records Technician position is a new position. The parties agreed as part of their tentative agreements to replace the Police Clerk Classification with the Records Technician Classification. Employees in the Police Clerk classification would be considered Record Technicians. Currently there are four Record Technician positions. Those positions were formerly Police Clerk positions. The first position was created in 1992. Originally, the employee in that position worked from 8:00-4:30 on Monday-Friday. At the employee's request, the hours were changed to 7:00-3:30 Monday-Friday. That is the present hours for that position. The second position began in 1995. The hours changed from 3:30-12:00 a.m. to 3:00-11:30 p.m. and then went back to the original hours. The third position was created in 1998. Originally, the days worked were Tuesday-Saturday from 8:00-4:30.[2] The days were then changed to Sunday-Thursday at the employee's request. The last position was created in 1998. Initially, the

Department intended the employee in that slot to work from 11:00 p.m. to 7:30 a.m. The hours were changed by the Police Department prior to its posting to 4:30 p.m.-1:00 a.m. That is the current hours. The Association proposal seeks to codify the present schedule for each of the four slots.

In the current agreement, Section 12.01 allows the City to change health insurance carriers if the coverage to be provided by the new plan is "substantially equivalent" to the current plan. Appendix B establishes as the Standard Plan the "Blue-Cross/Blue Shield Tradition Plus PPO." It is against this plan that any replacement plan is to be measured. In 1994, the City notified the various Unions representing the City's employees of its intent to change from the Blue Cross plan to a PrimeCare Plan. In the then current agreements, the terms substantially equivalent were included in the contracts of all three bargaining units. The Professional Police Association filed a grievance over the change to the PrimeCare Plan and alleged that the new plan was not substantially equivalent to the Blue Cross plan. The matter was submitted to arbitration before Arbitrator David Shaw. Arbitrator Shaw found that there were several major differences between the two plans and that the new plan was not substantially equivalent to the Blue Cross Plan. Since the new plan had already been placed into effect, the Arbitrator did not order the City to reinstate the old plan. Instead, he ordered the City to "make whole financially those employees who have incurred financial loss or losses as a result of that lesser coverage." The City had to reimburse employees for all losses incurred in those areas where the Arbitrator had found the plan not

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[2] The hours for these last two positions are not listed within the contract.

to be substantially equivalent. The Award was applied to all three bargaining units. Thus, employees that suffered losses in the unit involved in this dispute also were made whole. From 1995 through 1999, the cost to the City for this Unit as a result of the Shaw Award was approximately $600. Arbitrator Shaw had concluded that there were six main areas where the Prime Care Plan fell short of the Blue Cross Plan. Since that Award was issued, the City modified certain provisions of the Prime Care Plan to more closely parallel the Blue Cross Plan.[3] The changes did not cover all six areas of deficiency.

During the most recent negotiations in both the Teamster represented unit and the Police Unit, the parties agreed to make several changes to the language in their respective agreements. They agreed to change the words "substantially equivalent" to "fundamentally equivalent." They then agreed that the Prime Care Plan would fall within this definition and that the City would not need to continue to supplement the Prime Care coverage. The Shaw remedy would cease. The Police Agreement added language identical to the City's 12.02 proposal. That language is not in the Teamster contract. Both Unions did agree to change the employee health insurance contribution. All three of the old contracts required an employee to pay $5 for single coverage and $15 towards family coverage. In the Teamster contract, this was changed to $8 and $18. In the Police contract, it was changed to a flat $15 for either single or family coverage. That is the same proposal that the City made to this unit, and that the Association has included in

[3] The City proposal to add a new Sec. 12.02 reflects changes in one of those areas,

its final proposal.[4] Thus, this last item is not one where there is any disagreement among the parties. No matter which party's offer is accepted, this premium change will become effective with the implementation of the new agreement.

DISCUSSION

Each of the relevant statutory criteria will be examined as it relates to the two outstanding issues. In this case, the only factors that either side has argued to be relevant are internal comparables, external comparables and the welfare of the public. Both the Association proposal seeking a set Record Technician shift and the City proposal concerning health insurance are changes from the current language. Each party has argued against adoption of the other party's proposal because the proposal seeks to change the status quo without offering the necessary quid pro quo. In response, each party has argued that a quid pro quo is not necessary for adoption of their language. Each side cited numerous cases to support their respective arguments. The proposed changes to the status quo and the necessity for a quid pro quo will be addressed after the three factors listed above are analyzed.

Burden of Proof

The Association proposal for a set shift for the newly created record technician classification is new and would be a benefit to it. Currently no shift schedule is

[4] The City has indicated that during negotiations it gave the Association the option to choose either formula.

set in the agreement for these employees. The Association carrier the burden for this issue. The City proposes changing the health insurance language. Clearly, the City proposal is a direct result of the arbitration decision of Arbitrator Shaw. Under the City proposal, the obligation to supplement coverage would end. The City proposal also seeks to change the wording to Section 12.01. It wants to substitute the term "fundamentally equivalent" for the term "substantially equivalent." The parties disagree as to the significance of this change. At negotiations, the City was asked to define the phrase. They indicated that the meaning of the new term was "pretty darn close" to the meaning of the old one. Words are generally to be given their normal meaning. The Association cited considerable authority to show that the term substantially equivalent or some similar derivation is often used in collective bargaining agreements. It argues that the term fundamentally equivalent is rarely if ever used in agreements. In this Arbitrator's experience, that is true. Substantially equivalent is a common phrase that is used in many contexts within an agreement. On the other hand, the use of the words fundamentally equivalent is unique. It is my belief that the term substantially equivalent connotes a somewhat higher standard than does the phrase fundamentally equivalent. If that were not so, why would the City make this proposal at all. If the words were meant to be identical in meaning, there would be little reason to make this proposed change.[5] Thus, I agree with the

[5] If all that the City wanted was to end the application of the Shaw Award it could have simply sought agreement that the PrimeCare policy was now "substantially equivalent" to the Blue Cross Plan. That would have accomplished that goal. The change of words must be meant to do more than that.

Association that substitution of this term is a substantive change. The City proposal would cause the Association to lose something of value that it now has. Since both these changes to the health insurance provisions are changes that negatively impacts the employees in this Unit, the burden of proof that the City must meet to prevail on its proposal is a high one. They must present clear and convincing evidence supporting their proposal.[6]

Factors to be given the Greatest Weight and Greater Weight

Even though neither side has argued that these statutory factors are relevant, the State Legislature in Wis. Stat. 111.70(4)(b) has required an arbitrator to demonstrate that these factors were considered. If they are in issue, the Arbitrator must give the greatest weight to any state law that limits the expenditures of an Employer. It then requires the arbitrator to give greater weight to the economic conditions that exist in the jurisdiction. The Arbitrator agrees with the parties that neither of these factors is applicable in this case. The Arbitrator has considered the application of these two factors and finds that they do not impact upon my Decision for either of the outstanding issues.

Internal Comparables

Health Insurance

The language in all three collective bargaining agreement is not identical. However, there are many areas of overlap. The City proposed to all three bargaining units that they change the words "substantially equivalent" to

[6] Sheboygan County Dec. No. 28422 (Baron, 1996)

"fundamentally equivalent." They also proposed to all three units that the Prime Care Plan, as has been amended since the Shaw Award, now be considered equivalent to the Blue Cross Plan. The other two bargaining units voluntarily agreed to this change. The Employer argues that internal comparables clearly favor their proposal.[7] It believes this to be a controlling factor. Many interest arbitrators have found that "they are inclined to look towards internal comparables where a clear pattern of voluntary settlements exists." This is particularly true when the issue involves benefits. As Arbitrator McAlpin stated in City of Oshkosh Dec. No. 28284-A:

> It is appropriate for the Employer to seek out consistency among its represented employees and indeed all its employees. Therefore, the internal comparables are an important consideration and they do favor the Employer."

This Arbitrator has so held in prior cases.[8] The Association does not believe that a pattern can be established with so few bargaining units. Two bargaining units it believes do not make for a pattern. I must disagree. Arbitrator Yaffe issued an Award involving this City and the Teamsters Union. Health insurance was the issue. The other two units agreed to make the proposed changes. He found that "the reasonableness of the City's proposal is supported by internal comparables." Dec. No. 29061 (1997) That situation is no different than the situation

[7] The Association has countered by arguing that the other two units received some additional benefits in order to get them to agree to the changes and that corresponding benefit increases were not offered to this Unit. Whether the other units received a quid pro quo will be addressed later.

[8] Monroe County, Dec. No. 29593-A (1999)

confronting this Arbitrator. The same three units are involved. I find that the internal comparables on this issue favor the City.

Record Technician Shift

The Association believes that language setting up specific shifts for the Records Technicians and which spells out the number of employees per shift is justified even though that language is not contained in the current agreement. They note that their proposal merely places in writing what is already occurring. They contend that many of the employees in this bargaining unit and in the other two bargaining units have their shift schedules set out in their agreements.

Under this agreement, the City Hall and Municipal Building employees shift hours are Monday-Friday, 8:00-4:30. The Highway and Utility Employees work from 7:00-3:30. There are three sets of shift hours for dispatchers. The shifts the Police Officers work is also contained in their contract. Under the Teamster Agreement, the specific days and hours are listed for the Streets Department. The Parks Department Employees days are set, but not their hours. The Sewer Department Employees work Monday-Friday, but may also be rotated on weekends. The Library Employees covered by this agreement lists the days of work as Monday-Saturday, but contains no hours. The Police Contract does not list any hours or days for Investigations or for employees of the Department other than Police Officers. The City maintains that there is no schedule for Librarians or these other groups because the City needs flexibility in the scheduling for these positions. It contends that the same is true for the Records Technicians. It

argues that no shift is set in any agreement where the need to periodically change the schedules exists.

The Association has argued that the above examples demonstrate that the vast majority of employees have the benefit that it is seeking here. It argues that this included the Police Clerks whom these employees are replacing, In reality, that is not so. Two of the three Police Clerks that were employed under the 1996-1998 agreement worked hours different than those listed in the contract for Clerk Typists. Their hours were not set by contract. The Association is correct, however, that the hours for many employees in the City are set by their respective agreements. The Association proposal, however, goes one step further than is true for any classification of employees. Their proposal also specifies the number of employees that work each shift. No other classification has that. There is no dispute that the need here is for employees to work beyond the normal Monday-Friday, 8-5 schedule. The schedule proposed by the Association reflects that need. Where multiple shifts are set forth in the Agreement, no contract sets out the precise number of employees that can work each shift. Furthermore, several classifications with multiple shifts provide a range of hours for the shift, giving the City flexibility to move employees' hours within a shift to meet the City's needs. The City has changed the Record Technicians schedules in the past. The hours in the Association proposal even changed during the course of negotiations to reflect a schedule change. There is no flexibility to make these changes under the Association's proposal.

There is clearly some support from the internal comparables for the Association's desire to codify hours in the contract. However, what the Association is seeking is more than what other bargaining units have. It is much more restrictive. Therefore, I find that though there is some support for the Association's argument that internal comparables favor its proposal, there is greater support for the City position that they do not. This factor favors the City.

External Comparbles

What are the Appropriate Comparables to use?

This is not the first arbitration involving the City. There have been ten prior arbitrations. Two of those cases involved the current bargaining unit. The Awards were issued in those cases in 1979 and in 1988. For the most part, the previous Arbitrators found that the appropriate cities to use as comparables were the 25 cities surrounding the City of Milwaukee. The list of 25 cities that have been used, however, has had some variations. In this case, the parties agree upon 23 of the 25 cities. Those cities are Bayside, Brookfield, Brown Deer, Cudahy, Elm Grove, Fox Point, Franklin, Germantown, Glendale, Greendale, Greenfield, Hales Corner, Menomonee Falls, Mequon, Muskego, Oak Creek, St. Francis, Shorewood, Waukesha, Wauwatosa, West Allis, West Milwaukee and Whitefish Bay. Those cities shall be included on the list. The City also proposes the

inclusion of South Milwaukee and Thiensville. The Association wishes to add Butler and River Hills. The City does not oppose the addition of these two cities and asks the Arbitrator to include all of the cities proposed. That request is not unreasonable. Therefore, I shall consider all of the cities suggested as comparables.

Health Insurance

The City seeks to change the language in the contract from substantially equivalent to fundamentally equivalent. The Association has argued that the language used in the agreements of the comparable jurisdictions does not support this change. Several of the cities use the term substantial together with either the words "equivalent" or "similar." Other cities use either the words "equal" "better" or "greater' to describe the new plan. There are still other cities that have language that prevents that city from changing plans during the term of the agreement. None of the contracts uses the term fundamental. After reviewing the language in other contracts, it is clear that this factor favors the Association.

Shift Change

The City has argued that the language proposed by the City is more confining than is contained in almost all of the comparable cities. The City contends that there are 19 other cities that have contracts covering police clerks who perform duties similar to the duties of the Records Technicians. It argues that 8 of those agreements do not include set hours for the clerks, 3 allow the employer to

change the schedule in the contract and that only one contract specifies work schedules and the number of employees that can work a shift.

The Association offered a chart listing those cities that provided for set days and those that provided for set hours. It included 17 cites. Almost all of them had set days, and 10 cities had set hours. The list did not include S. Milwaukee or Thiensville. Both of those contracts have set days. Thiensville had set hours. The Association believes that without its language the City would have more latitude than exists in almost all of the other cities. The Association argues that the City would have "unfettered discretion" to choose the employees hours and that only one of the comparables gives the employer that much latitude.

Both parties are right. The Association has proposed comprehensive language. The City proposes no language at all. The ideal situation would be to have some language in the agreement, but less restrictive language than is proposed by the Association. Obviously, that cannot be done. The proposals by each side are the only proposals that can be considered. When that is done, it is my conclusion that external comparables favor neither party. There are hardly any that have language as extensive as is proposed by the Association. There are hardly any cities that have absolutely no language covering shifts. Both proposals have deficiencies when compared to the norm established by the external comparables. Thus, there is no pattern that points in either party's favor.

Interests of the Public

The Association argues that the word fundamental contained in the City's proposal is ambiguous. It believes there is little guidance on how to interpret that word. It contends that this language will invite litigation and grievances. It cited Arbitrator Zeidler in City of Two Rivers Dec. No. 26465-A (1990) where he stated that "The Arbitrator concludes owing to the ambiguity of the language it is not in the interests of the public to adopt the City's offer as it is presently worded." The City does not agree that its proposed language is ambiguous.

I have already found that the change in language from substantial to fundamental is a substantive change. I have also agreed with the Association that the use of the word fundamentally equivalent is far less pervasive than the use of the words substantially equivalent. I do not agree with the Association, however, that the use of the term will in itself promote litigation. Litigation can only occur when the plan is changed. When that happens, this Union or any of the Unions might contest that change, like they did before. That is no less or more likely because of the use of the term fundamental. While the new language would change the standard, it does not necessarily diminish the likelihood that a grievance would be filed. Therefore, I do not find that the interests of the public are a relevant factor in this case.

A change to the status quo

This Arbitrator has held in previous cases, as was noted by both parties, that the status quo is generally preferred. It should be left to the parties themselves to make any major changes to the agreement. I still hold to that

premise. The rule, however, like all rules, has exceptions. One party may offer a quid pro quo in order to gain acceptance of their proposed change to the status quo.[9] There are other exceptions. This Arbitrator has previously cited Arbitrator Reynolds in Adams County Highway Department. Dec. No. 25479-A (1988) Arbitrator Reynolds established a three-prong test to be used when determining whether a proposal to change the status quo should be adopted. If a party can show that: 1) a need for the change exists; 2) the proposed change reasonably remedies the situation; 3) the change will not cause an unreasonable burden on the other party. Under this test, a quid pro quo may not be needed. Not unexpectedly, each party has argued that a need for a quid pro quo exists in order to adopt the other sides' proposal and that none has been offered. Each party does not believe that any quid pro quo is needed to gain acceptance of their own proposal. They contend there are other reasons warranting adoption of them.

Health Insurance

The City argues that since the other two bargaining units have accepted the proposal to change from substantial to fundamental and have also agreed that the PrimeCare Plan is equivalent to the Blue Cross Plan, it is not required to offer a quid pro quo. It argues that this unit is the "Lone Holdout." Under this rule, Arbitrators are reluctant to reward the Union that holds out when all

[9] D.C. Everest School Dist. Dec. no. 24678-A (Malumud, 1988)

others have agreed to a provision, particularly where the issue in dispute concerns a benefit.[10] As Arbitrator McAlpin stated in City of Oshkosh:

> "It is appropriate for an employer to seek out consistency among its represented employees and indeed all of its employee..."[11]

Similarly, Arbitrator Yaffe held in his case involving this City, that because the other units accepted the health insurance change proposed a quid pro quo was not necessary. The Association argues that there is a major difference between those cases and this one. It contends that the other units in the City received additional benefits during their negotiations and that those benefits were offered in order to gain acceptance of the health insurance changes. It contends that no similar increases were offered to it.

The Arbitrator has reviewed the tentative agreements for this unit and the changes made to the agreements in the other units. The briefs of the parties highlighted many of the changes that were made. It is clear that the employees in each of the units obtained some gains in certain areas. Additional wages were granted to certain classifications in this unit, as well as in the other units. The patrol officers gained an additional step increase, but also lowered the starting wage for newly hired patrol officers. While the across the board wage increases were the same in each unit, it is obvious that each unit felt that there were certain inequities within their unit that needed to be addressed. That a

[10] Columbia County HealthCare Center Dec. No. 28960 (Kessler, 1997)
[11] Dec No. 28284 (1995)

unit may have a specific need is certainly possible. Regarding such a situation, Arbitrator Malumud[12] noted:

> In across the Board settlements, the parties must have the flexibility to make adjustments to rates for a particular classification or position in order to bring the benefits in line with the benefits enjoyed by other bargaining units without destroying the character of the overall settlement.

I find that is what has transpired in this City. The adjustments may or may not have been more substantial in one unit than another. Regardless of whether others received more, I do not find that there is any evidence that the gains received by the other units were offered as a quid pro quo for acceptance of the health insurance proposal. Nothing has been presented to this Arbitrator to show that the benefit or wage adjustments for the other units were tied to the health insurance proposal. The evidence simply does not support its argument.

The City has argued that the rule that requires a quid pro quo is "trumped by the well established "Lone Holdout rule." In essence, that is what Arbitrator Yaffe found in his case. He concluded that no quid pro quo was necessary, because a pattern was established. This Arbitrator in past cases has recognized that when addressing benefits the need for uniformity is great. I, therefore, agree with Arbitrator Yaffe and the City that no quid pro quo is required. The Lone Hold out rule does trump any requirement that otherwise would exist.

Work Schedule

[12] Douglas County Dec. No. 28215-A (1995)

The Association contends that since its proposal simply places in writing the existing practice no quid pro quo is needed. It quoted Arbitrator Zeidler. In Door County Dec. No 26946-A (1992), Arbitrator Zeidler stated that:

> This Arbitrator has held in some past decisions that under final and binding final offer arbitration any matter of status quo in the past can be raised for consideration and no quid pro quo is needed to do that and change it.

The Association further believes that its proposal "has identified a problem that should be addressed and its proposal offers a solution to that problem." The City argues that the holding by Arbitrator Zeidler is inapplicable. In Door County, there was a long existing practice. Here, the classification for which a set schedule is sought is new. The City contends that a past practice cannot become well established in such a short period of time. The City further maintains that the obligation on the Association to offer a quid pro quo has not been eliminated and that the Association has not offered one. It argues that the proposal should, therefore, be rejected.

I agree with the City that one cannot conclude from this record that the level of past practice has risen to the level that was present in Door County. However, I find that there are even more compelling problems with the Association's proposal. The Association has failed to meet any of the prongs of the Reynolds test. The Association contends that it has shown that a problem has arisen. In fact, it has not. The Association has not shown any history of abuse by the City concerning the hours for the Records Technicians. To the contrary, the history as to how and why the hours have changed over time

indicates willingness on the part of the City to adjust the hours worked to accommodate the needs of the employees. There has been no showing that the City has made modifications to the hours on a whim or to excess. Changes appear to have occurred when the employees sought those changes. Furthermore, the hours for several of the Police Clerk positions that were the predecessors to the Records Technicians were not set in the agreement and there was no problems caused by that. Where then is the need?

The Association has also argued that its proposal reasonably remedies the need that it says exists. Even if there was a need, I must conclude that the proposal goes beyond what would be necessary to meet that need, and that it would pose an unreasonable burden on the City. As has been noted, the proposal sets out the precise number of employees per shift. It then gives no latitude within a shift to adjust the hours forward or backward. The City has stated that it intends to hire more Record Technicians beyond the current four employees. What hours would any new employee work under this proposal? What if, as the City observed, they needed to layoff an employee? Would the listing of numbers within each shift, preclude that? All of these issues are present under the proposal made by the Association. Consequently, I must find that the rules cited by the parties and described above do not favor the adoption of the Association's work schedule proposal.

Conclusion

As to health insurance, the external comparables favor the Association. The Internal comparables favor the City. While there are some variations in the health insurance language proposed here and the language adopted by the other bargaining units, the main language in issue is the same for all three. The others have agreed to that language. Since the issue here is benefits, greater weight has to be given to the internal comparables.

The Association contends that even if the Arbitrator agrees with the City that uniformity is preferred, the proposal should still be rejected. It argues that the proposal is much too broad. At the outset of this discussion, I observed that the proposal to change the word substantially too fundamentally did more than simply trying to gain acceptance of the PrimeCare Plan. It changed the standard to a lesser one. I have already indicated in agreement with the Association that there were better ways to address the problem. However, I cannot ignore the fact that the other units accepted this very same proposal. I am not operating in a vacuum. I must consider what the others did. I must be guided by the desire for uniformity that this and other arbitrators have found to be so important. While I might very well agree with the Association on this issue absent the pattern established by the other units, I do not have the luxury of ignoring that pattern. When considering all factors, I must conclude that the health insurance proposal of the City is favored. I also find that the City has met the burden of proof that it needed to meet in order to prevail on this proposal. The internal comparables have trumped all else.

As to the work schedule proposal, I find that the external and internal comparables are a mixed bag. Some favor the Association and some favor the City. I am mindful of the fact that many of the classifications covered by this agreement have a set schedule. The request by the Association to have some schedule listed in the agreement has support notwithstanding the absence of a showing of abuse by the City. Other classifications have hours listed even though no abuse may have occurred. As noted already, what I find troubling with the Association proposal is its breadth. It goes further than any of the internal comparables and almost all of the external ones. It is too broad, and that is its Achilles heel.

It is ironic that I have found a flaw in the Association proposal because it seeks to do too much while rejecting that same argument by the Association with regard to the City's health insurance proposal. Unfortunately for the Association, the rules concerning the status quo cited by it regarding the health insurance proposal were trumped by the lone hold out rule, It is also unfortunate for it that it had no trump cards available to it to use for its own proposal. I find that the City proposal on both issues is preferred.

AWARD

The City offer together with the tentative agreement is adopted as the agreement of the parties.

Dated: May 18, 2000

Fredric R Dichter,
Arbitrator