ARBITRATION OPINION AND AWARD

In the Matter of Arbitration	)	
Between	)	
TOWN OF BELOIT (Waste Water, Road and Clerical)	)	Case 37 No. 60027 INT/ARB-9266
	)	Dec. No. 30219-A
And	)	
TEAMSTERS LOCAL UNION 579	)	

Impartial Arbitrator

William W. Petrie
217 South Seventh Street #5
Post Office Box 320
Waterford, Wisconsin, 53185-0320

Hearing Held

January 18, 2002
Beloit, Wisconsin

Appearances

For the Employer	LINDNER & MARSACK By James R. Scott Attorney at Law 411 East Wisconsin Avenue Milwaukee, WI 53202
For the Union	PREVIANT, GOLDBERG, UELMEN, GRATZ, MILLER & BRUEGGEMAN, S.C. By Jonathan M. Conti Attorney at Law 1555 North RiverCenter Drive, #202 Post Office Box 12993 Milwaukee, WI 53212

BACKGROUND OF THE CASE

This is an interest arbitration proceeding between the Town of Beloit and Teamsters Local 579, with the matter in dispute the terms of a two year renewal labor agreement effective January 1, 2001 through December 31, 2002, and covering the Wastewater, Road and Clerical or DPW bargaining unit. After their negotiations had failed to achieve a complete agreement, the Employer on June 1, 2001 filed a petition with the Wisconsin Employment Relations Commission seeking final and binding arbitration pursuant to Section 111.70 of the Wisconsin Statutes. Following an investigation by a member of its staff, the Commission issued certain *findings of fact*, *conclusions of law*, *certification of the results of investigation* and *an order requiring arbitration* on September 25, 2001, and on October 9, 2001 it appointed the undersigned to hear and decide the matter.

A hearing took place in the Town of Beloit, Wisconsin on January 18, 2002, at which time both parties received full opportunities to present evidence and argument in support of their respective positions, each thereafter closed with the submission of a post hearing brief, and the record was closed by the undersigned effective February 25, 2002.

FINAL OFFERS OF THE PARTIES

Both final offers, herein incorporated by reference into this decision, propose a *two year renewal agreement*, effective January 1, 2001 through December 31, 2002, with *retroactive 3% wage rate increases effective January 1 2001 and January 1, 2002*, payable to employees on the payroll as of the date of this award; they disagree only as to the *health insurance coverage* to be provided during the term of the agreement.

(1) In connection with *health insurance*, the final offer of the Employer is summarized as follows:

(a) Deletion of that portion of Article 20 which provides for a *health care reopener*.

(b) Revision of Section 20.01 to read as follows:

"**20.01 - Health Insurance**: The town shall pay the full cost of the premiums for health insurance coverage for the health plan in effect for employees of the Town during the term of this Agreement.

(c) Deletion of the parties' *side letter agreement* dated May 13, 1997, if it has not already expired by its terms.

(d) All changes in health insurance language and practice to be effective upon the date of the award or voluntary settlement.

(2) In connection with *health insurance*, the final offer of the Union proposes that *all contract language remain the same*, including *side letters*, *letters of understanding* and *addendums*.

THE ARBITRAL CRITERIA

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs the Arbitrator to utilize the following criteria in arriving at a decision and rendering an award:

"7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislature to administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

e. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

f. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost-of-living.

h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pension, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration hearing.

j. Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

POSITION OF THE EMPLOYER

In support of the contention that its final offer is the more appropriate of the two before the Arbitrator, the Employer emphasized the following principal considerations and arguments.

(1) In 1997 the parties negotiated a change from a Trustmark Insurance Company *indemnity plan* to a *preferred provider plan* identified as the Mercy Care 15 Plan.

(a) The parties entered into a *side letter of agreement* in which they acknowledged that the benefits appeared to be "substantially similar," and which obligated the Town to "guarantee" that the level of benefits would not fall below Trustmark's.

(b) The letter additionally provided that the agreement would continue for "the life of the agreement" and that if benefits proved to be inadequate, the Town would "revert to the Trustmark Plan" or "be responsible for any additional expenses."[1]

(c) The contract was amended to provide an open-ended reopener for health insurance negotiations.[2]

(2) The Union, understandably, takes the position that the side letter of agreement is tantamount to a permanent agreement that the Town will forever guarantee that the benefits will remain the same as they were in 1996.

(a) In fact, had the Town remained with Trustmark (or any other health care provider), benefits surely would have changed between 1996 and 2001.

(b) In point of fact, Trustmark now only offers an indemnity plan in geographical areas with no physician or hospital groups and, accordingly, had the parties remained with Trustmark their "plan" would have disappeared.

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[1] Noting the fact that identical *side letters of agreement* were published in the 1998 agreements covering the DPW and the Police bargaining units.

[2] Referring to the first paragraph of Article 20 of the labor agreement.

(3) Very significant cost consequences flow from the insurance coverage "guarantee."

(a) One cost consequence is that "memories" of past benefits enjoyed, dictate current coverage levels. Employees are free to assert that particular medical procedures, treatments, or drugs were covered by Trustmark and the Town must either pay or subject itself to the grievance/arbitration processes over the issue.

(b) Another consequence is that the PPO's incentive to stay within the network disappears, as the Town must pay the increased deductibles and co-pays. This additional cost to the Employer manifests itself in two principal ways: *first*, DPW employees averaged $61.93 per month in supplemental benefits in 2001, while Police employees averaged $10.81 per month;[3] and, *second*, the Town pays for a plan that is itself very expensive by today's standards.[4] The Town, given the guarantee, also has no incentive to obtain a less expensive Mercy Care plan.

(4) The contrast in insurance costs between the Town and its comparables is striking, *even without the supplement*.[5]

(a) The contrast in costs is particularly significant in light of the fact that the Town of Beloit is the "poorest" of the comparables when measured by *total equalized value*.

(b) The Town also pays the highest wage rates for police officers and is very competitive in its DPW wage rates, even though the cost of the health insurance supplement within the DPW unit is 36 cents per hour.

(5) The economic incongruities noted above evidence the fact that the parties never intended their 1997 side letter of agreement to constitute a perennial guarantee.

(a) Given the rapid changes in medicine and drugs, it is difficult to conceive that a "time capsule" approach to these benefits was intended.

(b) Clearly the Union had been concerned with the short-term impact of the change in carriers and plans; these were changes that both public and private sector employers and employees had gone through in the mid-1990's, as they struggled to deal with rapidly advancing health care costs.

(6) Certainly the Union will argue that no quid pro quo existed to justify a change.

(a) The Town submits that the case at hand is an extraordinary circumstance that does not warrant a substantial pay increase.

(b) Indeed, the transitional guarantee of benefit levels was itself a quid pro quo justifying the change from an indemnity plan (that no longer exists) to the Mercy Care PPO.

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[3] Citing the contents of Employer Exhibit IV, Tab F.

[4] Citing the plan costs summarized in Employer Exhibit IV, Tab G.

[5] Citing the contents of Employer Exhibit IV, Tab E.

(c) No public employee in the State of Wisconsin enjoys a scheme such as that currently enjoyed by the Union represented employees in the Town of Beloit.

(7) The internal comparables, always important when viewing an issue of fringe benefits, clearly favor the position of the Union.

(a) The non-represented employees and the firefighters no longer receive the supplemental benefits.

(b) In the Firefighters bargaining unit Arbitrator Ver Ploeg recognized the problems inherent in the existing health insurance scheme and selected the Town's offer without a quid pro quo. Contrary to the Union's argument, the firefighters had not turned in an "outrageous" wage proposal. As made clear in the decision the Union sought a three year wage increase package of 3½%, 3½% and 3½% plus 25¢ per hour in the third year; by way of contrast, the Town offered 3% and 3% wage increases, and the parties had previously agreed to a 5% EMT I certification, which was rolled into the Town's wage offer.

(8) The Union's quid pro quo argument is disingenuous, in that it accepted the Town's wage offer and now sits back and argues there is no quid pro quo.

(a) The Union, of course, made no proposal in this area, and leaves to speculation "how much?" would have satisfied it and resulted in a voluntary agreement.

(b) The position of the Union is the functional equivalent of simply saying "no" at the bargaining table and never offering a counter proposal.

(9) The Union perhaps learned from its mistakes in an earlier case before the undersigned, when it accepted change from an indemnity plan to an HMO, and then urged a higher wage rate as constituting an appropriate quid pro quo.[6]

(a) In the case at hand the Union used the opposite strategy, by accepting the wage offer, disputing the health insurance change, alleging an insufficient quid pro quo, and offering no alternative.

(b) As noted by Arbitrator Ver Ploeg, this is not an issue which will go away. To assert that the Town must "purchase" a change in order to get to the 21st Century in health care and to never set forth a "purchase price" is simply wrong.

(c) The Union's position on the merits is simply indefensible; despite the fact that no community in the State enjoys a comparable health care benefit, the Union makes no attempt to justify its continued existence.

On the basis of all of the above the Town submits that its final offer should be adopted in these proceedings.

POSITION OF THE UNION

[6] Citing the October 29, 1999 *decision of the undersigned* in City of Whitewater, Dec. No. 29432-A.

In support of the contention that its final offer is the more appropriate of the two before the Arbitrator, the Union emphasized the following principal considerations and arguments.

(1) That the *factor given "greatest weight"* criterion contained in Section 111.70(4)(cm)(7) of the Wisconsin statutes has no application to the dispute at hand, in that *the Employer is not subject to any limitations on its spending*; similarly, that the *factor given "greater weight"* criterion, also contained therein, has no application because *the Employer has not claimed an inability to pay*. That arbitral consideration of the remaining statutory criteria support the position of the Union.

(2) The Town has failed to establish a *compelling need to change the status quo* and has *offered no quid pro quo* in return for its proposed changes.

(a) In their May 13, 1997 *side letter agreement*, the parties agreed to change the health insurance carrier from Trustmark to Mercy Care, and they further agreed as follows:

"The Town will guarantee Teamsters Local Union No. 579 and its employees that the level of benefits provided by Mercy Care will not fall below those of the Trustmark Plan and if so the Town shall be responsible for all additional cost which would have been covered by Trustmark."[7]

(b) The Employer now proposes to eliminate the May 13, 1997 side letter agreement and to delete the reopener language in Section 20.01 of the agreement, thus *changing the status quo* and *significantly reducing health insurance benefits* for those in the bargaining unit.

(c) Changes in the negotiated status quo ante are not normally approved by Wisconsin interest arbitrators in the absence of a showing by the proponent of change that a legitimate problem exists which requires attention, that the proposed change reasonably addresses such problem, and that an appropriate quid pro quo has been advanced in support of the proposed change.[8]

(3) The proposed change in the status quo ante *would have a significant negative impact on bargaining unit Employees*.

(a) Under the most recent agreement the employees are offered both *in-network* and *out-of-network* benefits packages.

(b) Those who go out-of-network have a $150 deductible for single coverage and a $300 deductible for families; once the deductible has been met, the Town picks up 100% of the costs, including the extra fee for going outside the network; thus, while employees are technically penalized or charged for going outside the network, the Town picks up the additional costs. The reason for this is that when the Union agreed in May 1997 to change the plan from Trustmark

[7] Citing the contents of Employer Exhibit II, Tab B.

[8] Citing the April 6, 1999 *decision of the undersigned* in Washington County, Decision No. 29408.

to Mercy Care, the Town guaranteed that if the new benefits were lower, it would be responsible for the additional costs.

(c) The Town's final offer now proposes that employees who go outside the network would no longer have the same benefits as those who remain in the network. It proposes a $250/$750 deductible for employees who go outside the network and, once the deductible is met, the Town would pick up only 80% of any additional costs; the employees would, therefore, be responsible for 20% of the cost, with a maximum out-of-pocket expense of $1500 for single and $3000 for family.[9] Under the current plan, by way of contrast, an employee is only responsible for his deductible.

(d) The limit on one's ability to go outside the network for health providers *affects a significant portion of the DPW bargaining unit*. The Town provided evidence that 46% of the combined DPW and Police bargaining units, not just a select few, use the out-of-network plan.

(e) The proposed elimination of the parties' 1997 side letter would also allow the Town to unilaterally change the health plans again, with no guarantee that any new plan would be substantially equivalent to the Mercy Care plan.

(4) The Town has *not established a compelling need* for its proposed change.

(a) While the Town relies upon the fact that its insurance premium costs have increased from 2001 and are the highest among the external comparables, all of these comparables also had increases in health care costs from 2001 to 2002.[10]

(b) Consideration of the external wage comparisons does not support the selection of the final offer of the Employer, in that Beloit ranks in the middle for three-year laborers in 2001, and these 2002 wages are also lower than three comparables.[11]

(c) Regardless of external comparables, the fact remains that the Town approached the Union in 1997, when it wanted to change from the Trustmark to the Mercy Care plan; in exchange for such agreement, it guaranteed maintenance of the prior level of benefits. The fact that its comparable health insurance costs remain somewhat high, does not alone establish the requisite compelling need to modify the negotiated status quo ante; this is particularly true in that it has offered no quid pro quo in support of its proposed change.

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[9] Citing the contents of Union Exhibit #1.

[10] Citing the contents of Employer Exhibit IV, Tab E.

[11] Citing the contents of Employer Exhibit IV, Tab C.

(5) The Employer's reliance on the May 14, 2001 decision of *Arbitrator Christine D. Ver Ploeg* governing the Firefighter's bargaining unit, is misplaced.[12]

(a) While Arbitrator Ver Ploeg selected the Town's final offer, which included the same change in health insurance in issue in these proceedings, the decision was based upon her finding that the Town's overall offer was more reasonable, in that the Union's wage proposal was *much too high*.

(b) In the case before her, the Union had proposed a 3.5% increase for each year of a three year agreement, plus a compounded EMT certification add-on, plus a "catch up" increase for 2001. The Arbitrator had not wanted to eliminate the negotiated health insurance benefits, but was compelled to do so because the Town's entire package was more reasonable.[13]

(c) Pursuant to the above, Arbitrator Van Ploeg's decision should have no bearing on these proceedings because the Firefighter's overall proposal differed significantly from the Union's offer in these proceedings.

(6) It is undisputed that the Employer has offered *no quid pro quo* in support of its proposed radical change in the health insurance benefits language in the agreement.

(a) Where a party proposes a substantial change in benefits or contract language, the general rule is that it must offer an adequate quid pro quo.[14]

(b) Not only has the Town offered absolutely no quid pro quo in the case at hand, it offered no "*cushioning of the blow*" upon the employees. The out-of-pocket expenses for those going outside of the network will skyrocket, forcing them to choose between remaining with the same health care provider at an extremely high cost, versus leaving their long-term providers because they cannot afford to continue with them.

In light of the Employer's failure to establish a compelling need for its proposal to radically alter the employees' health benefits, its failure to address the need for the proposed change in a reasonable manner, and its failure to offer any quid pro quo for the change, its proposal must be rejected. On the basis of all of the above and consideration of the record as a whole, it urges that its is the more reasonable and equitable of the two

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[12] Citing the contents of Employer Exhibit III, Tab D.

[13] Citing the contents of Employer Exhibit III, Tab B, pages 6 and 8.

[14] Citing the decisions of *Arbitrator Krinsky* in Salem Joint School District No. 7, Decision No. 27479-A (May 1993); *Arbitrator Schiavoni* in Drummond Area School District, Decision No. 30067-A (October 2001); and *Arbitrator Malamud* in Wisconsin Indianhead Technical College, Decision No. 29510-A (February 2000).

final offers and that its final offer should thus be selected by the Arbitrator.

FINDINGS AND CONCLUSIONS

Without unnecessary elaboration it is noted that the determinative question before the Arbitrator in these proceedings is the appropriateness of the Employer proposed change in the contract language governing group medical insurance for those in the Police and in the DPW bargaining units, which proposal was unaccompanied by any specific *quid pro quo*.

(1) In support of its final offer, the Employer principally urges two alternative arguments: *first*, that both the prior letter of understanding and the medical insurance reopener clause had expired on December 31, 2000, the end of the prior agreement, and, accordingly, that no quid pro quo is required in these proceedings to justify their expiration; and, *second*, that the nature of the underlying change, when considered in conjunction with the overall level of wages and benefits within the two bargaining units, justifies selection of its final offer without a quid pro quo.

(2) In support of its final offer, the Union principally relies upon the general proposition that the Employer proposed elimination or modification of the prior contract and the accompanying letter of agreement, should have been accompanied by an appropriate quid pro quo.

What first of the Employer's argument that the parties' May 13, 1997 letter of agreement had expired by its terms, and thus required no quid pro quo to justify such expiration? This letter provides in material part as follows:

"AGREEMENT
BETWEEN
TEAMSTERS LOCAL UNION NO. 579
AND
TOWN OF BELOIT
POLICE DEPARTMENT
CLERICAL DEPARTMENT
WATER & SEWER DEPARTMENT
STREET DEPARTMENT

THIS AGREEMENT ENTERED INTO THIS 13th DAY OF MAY 1997 IS IN RESPONSE TO THE TOWN OF BELOIT'S REQUEST THAT TEAMSTERS LOCAL UNION NO. 579 AGREE TO A CHANGE IN HEALTH INSURANCE CARRIERS FROM TRUSTMARK TO MERCY CARE. THE TOWN HAS PROVIDED TEAMSTERS LOCAL UNION NO. 579 WITH THE FOLLOWING DOCUMENTS TO ASSIST IT IN IT'S REVIEW OF THE POLICIES.

1. The analysis of the Mercy Care plan compared to the existing Trustmark Plan.

2. Mercy Care group insurance proposal for the Town of Beloit.

THE LEVEL OF BENEFITS (BASED ON THE INFORMATION PROVIDED) ESTABLISHED IN THE MERCY CARE AND SUMMARY PLAN DOCUMENT FOR THE TOWN OF BELOIT APPEARS TO PROVIDE A LEVEL OF BENEFITS SUBSTANTIALLY SIMILAR TO THOSE PROVIDED BY TRUSTMARK SUBJECT TO THE IMPROVEMENTS DESCRIBED IN THE DOCUMENTS

> REVIEWED EARLIER. THE TOWN WILL GUARANTEE TEAMSTERS LOCAL UNION 579 AND IT'S EMPLOYEES THAT THE LEVEL OF BENEFITS PROVIDED BY MERCY CARE WILL NOT FALL BELOW THOSE OF THE TRUSTMARK PLAN AND IF SO THE TOWN SHALL BE RESPONSIBLE FOR ALL ADDITIONAL COST WHICH WOULD HAVE BEEN COVERED BY TRUSTMARK.
>
> THIS AGREEMENT IS TO BE CONSIDERED PART OF THE TEAMSTERS LOCAL UNION NO. 579 COLLECTIVE BARGAINING AGREEMENT'S DATED JANUARY 1, 1995, AND WILL REMAIN IN EFFECT THROUGH THE LIFE OF THE AGREEMENT'S. SHOULD THE UNION OR EMPLOYEE FIND AT A LATER DATE THAT THE INFORMATION PROVIDED WAS INCORRECT OR BENEFITS ARE LOWER, THEN THE TOWN WILL REVERT TO THE TRUSTMARK PLAN OR BE RESPONSIBLE FOR ANY ADDITIONAL EXPENSES INCURRED BY THE EMPLOYEE(S)."[15]

The undersigned notes that the above letter of agreement is not only published in the rear of the predecessor collective agreements covering January 1, 1998 through December 31, 2000, but the parties specifically agree therein that it is *considered part of such agreements*. Just as the expiration of a labor agreement does not automatically trigger cancellation of the negotiated wages, hours and terms and conditions of employment provided for therein and necessitate so-called start from scratch bargaining, letters of understanding published within labor agreements are normally treated as part of the ongoing agreement until they are modified or eliminated by the parties. If the parties had not intended the May 13, 1997 letter of understanding to be handled in the normal manner governing such documents, it was incumbent upon them to specifically indicate their intention that it was to be effective *only* during the three year term of the agreement and was to automatically expire thereafter. To the contrary, however, it seems quite clear that the letter was the *quid pro quo* for the Union's agreement to the 1997 changes in medical insurance within both the Police and DPW bargaining units, and there is simply nothing in the record to persuasively indicate that the parties had intended this quid pro quo to completely expire on December 31, 2000, while the negotiated changes in medical insurance coverage continued thereafter.

It is next noted by the Arbitrator that the same health insurance re-opener clause appears in both the Police and the DPW agreements, which provides as follows:

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[15] See the contents of Employer Exhibit II, Tabs A & B, published at the final pages of the DPW and Police agreements.

> "THE UNION AND THE TOWN AGREE TO MAINTAIN THE EXISTING BENEFITS ON HEALTH INSURANCE AS PROVIDED IN THE CONTRACT, HOWEVER THE UNION AND THE EMPLOYER HAVE AGREED TO RE-OPEN THE CONTRACT FOR THE EXPRESS PURPOSE OF NEGOTIATING SAME, THE NEGOTIATION OF HEALTH INSURANCE CHANGES WILL BE CONDUCTED WITH ALL DEPARTMENTS OF THE TOWN OF BELOIT, POLICE, FIRE, SEWER & WATER, ROAD CREW AND CLERICAL.[16]

The final offer of the Employer also proposes the elimination of this contract provision but, just as discussed above, there is simply nothing in the record to persuasively indicate the parties' intention for this provision to automatically expire on December 31, 2000.

On the above bases, the undersigned has concluded that neither the parties' May 13, 1997 *letter of understanding* nor the insurance reopener clause in the predecessor agreements, automatically expired on December 31, 2000.

It is next noted that both parties have urged valid principles recognized by Wisconsin interest arbitrators in support of their respective positions relating to the need for a quid pro quo in the case at hand.

(1) The Employer urges that it has *a bona fide, legitimate and significant interest in controlling the burgeoning costs of group medical insurance,* and that proposals to address such problems *need not always be supported by conventional quid pro quos*.

(2) The Union urges that the proponent of change in the negotiated status quo ante must normally show that *a legitimate problem exists which requires attention*, that *the proposed change reasonably addresses the problem*, and that *an appropriate quid pro quo has been advanced* in support of the change.

The question before the undersigned is which of the above referenced principles should govern the final offer selection in these proceedings?

In the above connection, it must be recognized that certain *long term and unanticipated changes* in the underlying characteristics of group medical insurance may constitute significant *mutual problems of the parties* which do ***not*** require traditional *quid pro quos* to justify change. Conversely, however, the application of this principle should ***not*** be utilized *to allow either party to eliminate or to significantly change a recently bargained for benefit which has not undergone significant long term and unanticipated change since coming into existence*, without an appropriate quid pro quo. The application of these

[16] See the first paragraph of Article 20 of the agreement.

two principles was fully described and applied by the undersigned, as follows, in a previous interest arbitration where Employer proposed changes in group medical insurance had been approved without benefit of a quid pro quo; the decision also quotes from an earlier arbitral decision in which employer proposed changes in the wage structure had been disapproved.

> "Wisconsin public sector statutory interest arbitrators have recognized the occasional need for innovation or for change in the status quo ante, provided that the proponent of such change or innovation has demonstrated that a legitimate problem exists which requires attention, and that the disputed proposal reasonably addresses the problem. The Wisconsin interest arbitrator, operating as an extension of the contract negotiations process, normally attempts to place the parties into the same position they would have reached over the bargaining table had they been able to agree, and an appropriate quid pro quo may be required to justify the proposed elimination of or substantial change in an established, existing and defined policy or benefit; the rationale for the so-called quid pro quo requirement is that neither party should gain either the elimination of or a substantial change in a previously negotiated policy or benefit, without having advanced a bargaining quid pro quo equivalent to that which normally would have evolved from the give and take of conventional bargaining. It would be very difficult, for example, for either party to justify the elimination or the substantial modification of a recently negotiated policy or benefit, unless a very persuasive case had been made. In an earlier school district interest arbitration, for example, the undersigned addressed as follows an employer proposed elimination of a compacted salary schedule for teachers that had been agreed upon in the immediately preceding negotiations:
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> > 'What then of the arguments of the Employer that its agreement to a compacted salary schedule in negotiations for the 1983-1984 agreement does not represent the status quo, that the agreement was reached out of fatigue rather than conviction, and that the negotiations history showed a lack of understanding of the full implications of the compacted salary schedule at the time of the agreement? What of the countervailing arguments of the Association that the compacted schedule does represent the status quo, that it was agreed upon only after full discussion and explanation between the parties, and that the new salary schedule was the product of considerable give and take in the negotiations process?
> >
> > After a full examination of the record in these proceedings, the Arbitrator has reached the preliminary conclusion that the compacted salary schedule which was voluntarily agreed upon by the parties in the negotiations leading to the 1983-1984 agreement, was the product of full discussion between the parties, and did not evolve from any apparent misconceptions or mistakes, and apparently represented compromise by the parties in the normal give and take of bargaining.
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> > * * * * *
> >
> > Having preliminarily concluded that the compacted salary schedule properly represents the previously negotiated status quo, has the Employer presented the requisite persuasive case for arbitral revision of the schedule? The District urged comparisons dealing with percentage relationships at various points in its proposed salary schedule, are simply unpersuasive in the dispute at hand, as are the relative rankings within the suggested comparison group. Had the ranking and the percentage figures been presented at a point in time when the Employer was protesting a

> suggested movement into a compacted salary schedule, the data would have been material and highly relevant to the outcome. In the situation at hand, however, the Arbitrator is called upon to deal with a situation where the parties comprehensively modified the salary schedule during a series of eighteen negotiations meetings just a single year prior to the effective date of the renewal negotiations leading to the matter in dispute in these proceedings. It simply would take a far more persuasive case than the arguments advanced by the District to justify arbitral abandonment of the negotiated settlement of the parties from the prior year.' [Citing the *decision of the undersigned in* Joint School District Number 1, Towns of Wheatland, Brighton, Randall and Salem, Wisconsin, WERC Case 5, No. 33613, MED/ARB-2869, July 8, 1985, pp. 11-12.]
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> What, however, of the situation where the costs and/or the substance of a long standing policy or benefit have substantially changed over an extended period of time, to the extent that they no longer reflect the conditions present at their inception? Just as conventionally negotiated labor agreements must evolve and change in response to changing external circumstances which are of mutual concern, Wisconsin interest arbitrators must address similar considerations pursuant to the requirements of Section 111.70(4)(cm)(7)(j) of the Wisconsin Statutes; in such circumstances, the proponent of change must establish that a significant and unanticipated problem exists and that the proposed change reasonably addresses the problem, but it is difficult to conclude that a bargaining quid pro quo should be required to correct a mutual problem which was neither anticipated nor previously bargained about by the parties. While comparisons should not alone justify movement away from the negotiated status quo, if it has been established that the requisite significant problem exists, arbitral examination of comparables can go a long way toward establishing the reasonableness of a proposal for change.
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> The parties agreed upon the ten year maximum period of Employer payment of unreduced health care premiums for early retirees in the late 1970s, but the meteoric escalation in the cost of health insurance since that time has exceeded all reasonable expectations, and the immediate prospect for future escalation is also significantly higher than could have been anticipated by either party some twelve or thirteen years ago. In short, the situations represents a significant mutual problem, and it is clearly distinguishable from a situation where one party is merely attempting to change a recently bargained for and/or a stable policy or benefit for its own purposes."[17]

In the case at hand it is recognized that the Employer proposed medical insurance related changes were undertaken in response to *a legitimate problem requiring attention* (i.e., the Town's ongoing and continuing escalation in medical insurance costs), and they *reasonably address the underlying problem* by seeking reduced employee use of more costly out-of-network medical services and uniform medical insurance coverage among its employees. As described by the undersigned in the above cited cases, however, Wisconsin interest arbitrators operate as extensions of the contract negotiations process and

[17] See the November 10, 1992 *decision of the undersigned* in Algoma School District, Case 18, No. 46716, INT/ARB-6278, pp. 24-25.

they normally require the proponent of elimination or substantial change in a previously negotiated policy or benefit to advance a quid pro quo equivalent to that which would have evolved in the give and take of conventional bargaining. An exception to this requirement may exist where *the costs or the substance of a long standing policy or benefit have substantially changed over an extended period of time*, where *they no longer reflect the conditions present when they were negotiated*, and where the proposed change is directed toward *correction of a mutual problem which was neither anticipated nor previously bargaining about by the parties.*

In applying the above described principles to the situation at hand, it must be recognized that while there have been continuing increases in the cost of medical insurance since the parties earlier negotiations, this trend was ongoing, foreseeable, anticipated and bargained upon by the parties in reaching the predecessor agreement covering January 1, 1998 through December 31, 2000; indeed, the letter of agreement and the medical insurance reopener clauses were the *quid pro quos* for the medical insurance changes then agreed upon by the parties, which the Employer is now seeking to eliminate. While it is entirely proper for the Employer to have continued to pursue this goal in these proceedings, the record falls far short of establishing that its current final offer falls within the category of proposals which need not be accompanied by appropriate quid pro quos.

On the above described bases, the undersigned concludes that the medical insurance related changes contained in the final offer of the Employer fall well within the category of proposals which require an appropriate quid pro quo, and that the lack of such a quid pro quo significantly favors arbitral selection of the final offer of the Union in these proceedings.

What next of the remaining arguments of the parties relating to the final offer selection process, principally including the significance of the Town's prior arbitration in the Firefighters bargaining unit, and the significance of internal and external comparables?

(1) The Employer urges that the May 14, 2001 decision and award of *Arbitrator Christine Ver Ploeg* in the Town's Firefighters' bargaining unit, should be determinative in these proceedings, and the Union disagrees. In examining this decision the undersigned notes that, contrary to the situation at hand, the parties had

disagreed upon various items in addition to the Employer proposed change in medical insurance coverage, including the makeup of the primary external comparables, the number and amounts of general wage increases during the life of the renewal agreement, compensation for EMT certifications, and the duration of the renewal agreement. While she did not specifically discuss the *quid pro question* in connection with the Employer proposed change in employee health insurance, she noted the reluctance of arbitrators "to relieve parties of their voluntary agreements" and concluded that "The Employer's proposal to delete these employees' premium contributions and accord them the same benefits as all other employees--*presented as part of a larger reasonable total package which the arbitrator cannot modify*--is adopted."[18] (emphasis supplied) On these bases, the decision of Arbitrator Ver Ploeg is distinguishable from the case at hand, and it cannot be assigned significant or determinative weight in these proceedings.

(2) What next of the Employer reliance upon the external and the internal comparisons which show that those in both bargaining units are well paid and have competitive fringe benefits, in addition to their medical insurance which is the best among all comparables? Had there been an appropriate quid pro quo advanced by the Employer, the internal and external comparables would have gone a long way toward establishing the reasonableness of the proposed change. As discussed earlier, however, neither the external nor the internal comparables can *alone* justify movement away from the negotiated status quo ante.

(3) What next of the Employer's argument that the Union had never made a group medical insurance counter proposal, and had never indicated how much would have been required to reach a voluntary settlement in this area? While it is clear that the Union has continued to insist upon retention of the status quo ante in this area, it is equally clear that the Employer, as the proponent of change, has the responsibility to propose an appropriate quid pro quo in support of its proposal, while the Union has no obligation to begin bargaining away from its own position.

(4) The undersigned is cognizant of the Employer's position that significant cost consequences flow from continuation of its insurance coverage "guarantee," and it also seems clear that this matter will be revisited by the parties in future negotiations. No ability to pay question has been advanced in these proceedings, however, and the continuing costs of the previously negotiated provisions cannot be assigned determinative weight in these proceedings.

At this point the undersigned will merely express the hope that in the give and take of conventional bargaining, the parties will be able to reach future agreement in the medical insurance area without the necessity of additional arbitration.

Summary of Preliminary Conclusions

[18] See the contents of Employer Exhibit III, Tab B, at page 8.

As addressed in greater detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions.

(1) The determinative question before the Arbitrator in these proceedings is the appropriateness of the Employer proposed change in the contract language governing group medical insurance for those in the Police and in the DPW bargaining units, which proposal was unaccompanied by any specific *quid pro quo*.

   (a) In support of its final offer, the Employer principally urges two alternative arguments: *first*, that both the prior letter of understanding and the medical insurance reopener clause had expired on December 31, 2000, the end of the prior agreement and, accordingly, that no quid pro quo is required in these proceedings to justify their expiration; and, *second*, that the nature of the underlying change, when considered in conjunction with the overall level of wages and benefits within the two bargaining units, justifies selection of its final offer without a quid pro quo.

   (b) In support of its final offer, the Union principally relies upon the general proposition that the Employer proposed elimination or modification of the prior contract and the accompanying letter of agreement, should have been accompanied by an appropriate *quid pro quo*.

(2) Contrary to the arguments advanced by the Employer, neither the parties' May 13, 1997 *letter of understanding* nor the *insurance reopener clause* in the predecessor agreements, automatically expired on December 31, 2000.

(3) Both parties have advanced valid principles recognized by Wisconsin interest arbitrators in support of their respective positions relating to the need for a *quid pro quo* in the case at hand.

   (a) The Employer urges that it has *a bona fide, legitimate and significant interest in controlling the burgeoning costs of group medical insurance,* and that proposals to address such problems *need not always be supported by conventional quid pro quos*.

   (b) The Union urges that the proponent of change in the negotiated status quo ante must normally show that *a legitimate problem exists which requires attention*, that *the proposed change reasonably addresses the problem*, and that *an appropriate quid pro quo has been advanced* in support of the change.

   (c) The question before the undersigned is which of the above referenced principles should govern the final offer selection in these proceedings?

(4) Certain *long term and unanticipated changes* in the underlying characteristics of group medical insurance may constitute significant *mutual problems of the parties* which do ***not*** require traditional *quid pro quos* to justify change. Conversely, however, the application of this principle should ***not*** be utilized *to allow either party to eliminate or to significantly change a recently bargained for insurance benefit which has not undergone significant long term and unanticipated change since coming into existence, without an appropriate quid pro quo*. In applying these alternative arbitral principles to the dispute at hand, the following described considerations are determinative.

(a) While there have been continuing increases in the cost of medical insurance since the parties earlier negotiations, this trend was *ongoing, foreseeable, anticipated and bargained upon by the parties* in reaching the predecessor agreement covering January 1, 1998 through December 31, 2000; the letter of agreement and the medical reopener clauses in issue were the *quid pro quos* for the medical insurance changes then agreed upon by the parties, which the Employer is now seeking to eliminate.

(b) The medical insurance related changes contained in the final offer of the Employer fall well within the category of proposals which *require an appropriate quid pro quo*, and the lack of such a quid pro quo significantly favors arbitral selection of the final offer of the Union in these proceedings.

(5) The May 14, 2001 *decision of Arbitrator Ver Ploeg* governing the Firefighters bargaining unit is distinguishable from the case at hand, and it cannot be assigned significant or determinative weight in these proceedings.

(6) Neither the external nor the internal comparables can *alone* justify movement away from the negotiated status quo ante in these proceedings.

(7) The Employer, as the proponent of change, has the responsibility to propose an appropriate quid pro quo in support of its final offer, while the Union has no obligation to begin bargaining away from its own position.

(8) While the Employer has emphasized the significant cost consequences flowing from continuation of its insurance coverage "*guarantee*," no ability to pay question exists in these proceedings and the costs of continuation of the previously negotiated benefit cannot be assigned determinative weight in these proceedings.

Selection of Final Offer

Based upon a careful consideration of the entire record in these proceedings, including arbitral consideration of all of the statutory criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes in addition to those elaborated upon above, the Impartial Arbitrator has preliminarily concluded that the final offer of the Union is the more appropriate of the two final offers, and it will be ordered implemented by the Parties.

AWARD

Based upon a careful consideration of all of the evidence and arguments, and a review of all of the various arbitral criteria provided in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Union is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the final offer of the Union, hereby incorporated by reference into this award, is ordered implemented by the parties.

WILLIAM W. PETRIE
Impartial Arbitrator

April 25, 2002