

BEFORE THE ARBITRATOR

In the Matter of the Final and Binding Interest Arbitration Dispute between

VILLAGE OF GERMANTOWN

and

GERMANTOWN MUNICIPAL EMPLOYEES UNION, LOCAL 3024, DISTRICT COUNCIL 40,
AFSCME, AFL-CIO

WERC Case 53, No. 61996, Int/Arb-9850
[Decision No. 31006-A]

APPEARANCES:

For the Union: Mr. Lee Gierke, Staff Representative, AFSCME Council 40, P.O. Box 727,
Thiensville, WI 53092

For the Employer: von Briesen & Roper, S. C., by James R. Korom, Esq., 411 East Wisconsin Ave.,
Suite 700, P.O. Box 3262, Milwaukee, WI 53201-3262.

ARBITRATION AWARD

The Union has represented a bargaining unit of Highway, Parks, Water, and Wastewater Department employees for many years. The parties' most recent collective bargaining agreement expired on December 31, 2002. On January 10, 2003, the Village filed a petition with the Wisconsin Employment Relations Commission requesting arbitration pursuant to Section 111.70(4)(cm)6, Wis. Stats. Efforts to mediate the dispute by a staff member of the Commission were unsuccessful, and an impasse investigation was closed by the Commission's order requiring interest arbitration, dated July 29, 2004. The undersigned Arbitrator was appointed by Commission order dated August 17, 2004. A hearing was held in this matter in Germantown, Wisconsin on November 9, 2004, at which time the parties were given full opportunity to present their evidence and arguments. No transcript was made, briefs and reply briefs were filed by both parties, and the record was closed on January 28, 2005.

Statutory Criteria to be Considered by Arbitrator

Section 111.70 (4) (cm) 7

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 legislative or 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. Comparison 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. Comparison of the 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. Comparison of the 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 pensions, 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 proceedings.
- 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.

The Employer's Final Offer

All provisions of the 2000-2002 Collective Bargaining Agreement to remain unchanged except as follows:

1. All appropriate date changes to reflect a three-year duration from January 1, 2003 through December 31, 2005.
2. Tentative Agreements (attached).
3. Insert the following language as a new final paragraph in Article 15.01, after the words “for the family plan.” At the top of page 15:
 Effective January 1, 2003, provided the Employer has a Section 125 plan in place, employees will contribute an amount equal to two percent (2%) of the monthly health insurance premiums towards the single and family plan premiums for the health insurance program described as Plan 3, as that plan existed on the date of execution of this Agreement. The employee contribution will increase to 4% on January 1, 2004 and 6% on January 1, 2005.
4. Increase all wage rates in Appendix A as follows:

Effective 1/1/03	3.5%
Effective 1/1/04	3.5%
Effective 1/1/05	2.0%
Effective 7/1/05	2.0%
5. Modify Article 13.09 by increasing weekly pager pay amounts from \$50 to \$55 effective 1/1/03; \$60 effective 1/1/04; and \$65 effective 1/1/05.

The Union’s Final Offer

All provisions of the 2002-2202 Labor Agreement to remain unchanged except as follows:

1. All appropriate date changes to reflect a three-year duration from January 1, 2003 through December 31, 2005.
2. Tentative Agreements (attached).

3. Amend Article XV Health Insurance as follows:

Employees to contribute the following amounts monthly for health insurance.

	Single	Family
January 1, 2003	\$12.50	\$25.00
January 1, 2004	\$15.00	\$30.00
January 1, 2005	\$17.50	\$35.00

Amend the benefit structure of the health insurance plan to reflect the following changes to the current plan:

Co-insurance limits: In network 90% of \$3,000, then 100%

Co-insurance limits: Out of network 80% of \$3,000 then 100%

Deductible Single \$100 Family \$300

Prescription Drugs \$10 Generic \$20 Brand

Well Baby Care 100% after deductible

Plan changes to be effective upon ratification of the contract or the decision of the arbitrator.

4. Increase wage rates in Appendix A as follows:

January 1, 2003 3.5%

January 1, 2004 3.0%

January 1, 2005 3.0%

5. Modify Article 13.09 by increasing the weekly pager pay amounts from \$50 to \$60 effective 1/1/03; \$70 effective 1/1/04; and \$80 effective 1/1/05.

Stipulation

At the hearing, the parties stipulated as follows:

Plan 3 will take effect on receipt of the Award. Any implication to the contrary (concerning retroactivity of deductibles, drug card change etc.) in the Employer's final offer is waived by both parties.

The Employer's Position

The Employer characterizes the key difference between the final offers as being its desire for a partnership with the employees to control health insurance cost increases, compared to the Union's approach of proposing a fixed dollar contribution by employees in each year. The Employer notes that there are some increased costs to employees as a result of stipulated changes in the health insurance plan, but argues that unlike other Village employee groups, employees represented by this Union will not have their costs increase until after the award is issued. The Employer characterizes the benefit changes in Plan 3 as minor.

The Employer argues that health insurance costs have escalated rapidly, such that for 2003 the self-funded plan's expenditures exceeded expectations by nearly \$130,000, resulting in a negative balance at the end of the year of \$94,434. In 2004, the negative balance increased greatly, requiring the Village to transfer \$400,000 from its general fund to cover the costs. The Village argues that the

Union's offer leaves all future risks to taxpayers even though other Village employees have agreed to share some of this risk, noting that the Dispatchers bargaining unit has agreed to pay 6% of the premium, while nonrepresented employees are now paying 10% of the premium. The Employer points out that in the private sector it is typical for employees to pay a higher percentage than that. The Employer argues that in this bargaining unit only one employee, who as a part-timer is not eligible for insurance, does not take the Village's insurance, a telling indicator that the insurance is a quality benefit at a very cheap price, since no bargaining unit member has opted for a spouse's plan instead. The Employer argues that its approach to health insurance encourages employees to reduce their health expenditures where not necessary, while the Union's fixed cost approach has no such effect. The Employer cites a RAND study to this effect (to which the Union objects vigorously, as the study itself was not placed in the record.)

The Employer argues that the Union's calculations as to the cost of health insurance are incorrect, because they do not address the 25% spike in premiums for year 2005, estimating a mere 14% instead. The Employer calculates the difference in cost of the two parties' proposals at just over \$2000 for 2003, with the Employer's being more expensive; approximately another \$2000 for 2004, again with the Employer's offer being higher; and slightly over \$15,000 in 2005, this time with the Union's proposal being more expensive. The Employer costs the total over the three years at a difference of \$11,277, or a difference between a total percentage increase of 15.34% and 16.66%, with its own offer being less.

With respect to the specific statutory criteria, the Employer argues that the "lawful authority" and "stipulations" criteria are not significant in this matter, while the interest and welfare of the public/financial ability criterion favors its proposal because in the absence of a true employee sharing in the costs of escalating premiums, further surprises like the \$400,000 contribution to the plan the Village had to make from the general fund in 2004 can be predicted. Internal comparability, the Employer argues, favors its proposal because the employees in this unit are well-paid in terms of wages and the Village's proposal outpaces even the Union's wage proposal, such that employees would finish the three-year contract making \$.32 per hour more under the Village's proposal than under the Union's. The Employer characterizes other bargaining units as having received similar wage increases, except for the nonrepresented employees, yet the nonrepresented employees moved first to pay 6% of their premiums, and are now at 10%. The pager pay increase by the Employer moves the rate up by \$5 per week in each of three years, a substantial increase in percentage terms and one which is more reasonable than the Union's "windfall" proposal, which leads to a 60% increase over the three-year contract. But the key issue is insurance, where this unit continues till the date of the award to pay nothing toward health insurance premiums, unlike every other employee of the Village. The Employer argues that the Police bargaining unit has been paying \$20 per month for both single and family employee plans since July 2002, while the Dispatchers have been paying 6% since October 2002. This unit, unlike the Dispatchers, has been offered a phase-in starting at 2% in the first year, and furthermore, the Village's offer includes a higher than normal wage increase in the second and third years as a *quid pro quo*.

External comparability, the Employer notes, requires first a determination of which bargaining units are comparable. The Employer argues that in two previous Germantown cases, arbitrators have used Brown Deer, Cedarburg, Port Washington, Grafton and Muskego as the comparable pool, beginning

with a 1994 award by Arbitrator Gil Vernon¹ in which these communities were chosen based on number of employees, population, average property tax bills, average property values, average community incomes, and equalized taxable property. The Employer strongly objects to the Union's decision, apparently reached only after bargaining had reached impasse, to argue for the addition of Mequon, Menomonee Falls and Hartford, noting that Arbitrator William Petrie² found in 1997 that the external comparables for Germantown were already well-established and not subject to change without compelling reason. The Employer further argues that Mequon's income and property statistics are radically different from Germantown's, while Menomonee Falls has nearly twice the population of Germantown and Hartford is a distant community that is much smaller. The Employer notes that a number of other communities that are similar in land size, geography, population and other characteristics are not proposed as comparables by the Union, including Franklin, Oak Creek, West Bend, New Berlin, Mukwonago, Jackson, Pewaukee and Saukville, raising the question of why these should be excluded if Mequon, Menomonee Falls and Hartford are proposed as additions. The Employer argues that in a number of these communities, unions have agreed to percentage amounts to be paid by employees toward health insurance as the Employer seeks here. Furthermore, under either the Union's or the Village's proposal, this unit would continue to fall in the middle of the other five comparable communities for premium contributions, and the Union would continue to have the cheapest deductibles and the second cheapest drug card. Furthermore, the Employer notes, Port Washington and Cedarburg, the two comparables with the lowest employee contributions, have substantially higher deductibles than Germantown, and their employees also pay more for name-brand drugs. With respect to private-sector comparisons the Employer argues that private sector employees in the greater Milwaukee area are contributing 20 to 30% of health insurance premiums, while conceding that there is a general lack of data.

The Employer argues that the cost of living factor strongly favors the Village's final offer as the wage proposal greatly exceeds the CPI for all three years, as does its pager pay proposal and the total package. Total compensation favors the Employer's proposal also, because the wage position of this unit would retain its leadership among the comparables, internal and external, while the health insurance benefits are competitive under either party's final offer and the pager pay benefit is also substantial. The "changes in the foregoing" factor also favors the Employer's proposal, because overall trends in insurance continue to show more costs being shifted toward workers from employers, and because the delay in resolving this matter has saved employees money throughout as the benefits changes in the medical plan are not retroactive.

Under "other factors", the Employer argues that the status quo should be interpreted as being "dynamic", because health insurance does not remain the same product over time, so that there are quality improvements to be taken into account. The Employer also cites a number of arbitrators as having found that employees have an ordinary responsibility to make responsible cost-effective choices when using employer-funded benefits, and argues that the Employer's overall approach is

¹ Dec. No. 27803-A (5/94)

² Dec. No. 28860-A (6/97)

consistent with these rulings by encouraging employees to make cost-effective choices while compensating them well for the added cost involved in their premium sharing. The Employer notes that at least one other bargaining unit of the Village has already demonstrated by its actions that the Village has taken a reasonable and measured approach toward health insurance costs, and argues that especially on health insurance issues, internal comparability is typically deemed by arbitrators to be more important than external comparability. The Employer particularly cites several decisions referring to the “lone holdout rule”, arguing that this unit has delayed for nearly three years agreeing to any premium sharing at all, and yet it is being offered a fair quid pro quo for the proposed percentage premium sharing. The Village, in summary, urges that its proposal represents a fair compromise between the parties’ interests, while the Union’s proposal forces the Employer to start all over again bargaining for the same fundamental change that other employees have already accepted, i.e. a percentage based premium payment.

In its reply brief, the Employer stresses that the Union never indicated its intent to refer to a different set of comparables than those used by previous arbitrators in Germantown until after bargaining and mediation had failed to produce an agreement. The Employer argues that the two prior arbitrators followed a well reasoned and principled approach, while the Union here, by arguing for communities they wish to be compared to, is attempting to take advantage of the fact that selection of comparable communities can never be a precise science, while ignoring entirely the existence of other communities that would be at least as relevant. The Employer also contends that even if the Union’s handpicked additions are included, the numbers do not dramatically change.

With respect to internal comparability, the Employer argues that there is a clear trend within the Village of Germantown towards percentage based premium sharing, and that the nonrepresented employees are not irrelevant because even though they are not formally represented by a union, they represent a significant part of the relevant labor market: since there are other jobs they could go to if unfairly treated by the Employer, the Employer argues that their experience does represent a fair comparable. The Employer objects to the Union’s calculation of the Dispatchers’ settlement for 2003, arguing that dispatcher groups have wide varieties of relative responsibility, in which some such centers carry much greater levels of responsibility than others which merely act in support of a county-wide dispatch center. The Village argues that its Exhibit “7” (actually 19) substantiates that the dispatch settlement was based on external comparability, such that the dispatch employees were merely catching up to their appropriate level, and it is not appropriate to view that settlement as an exceptionally large settlement explaining that union’s agreement to the percentage employee contribution to health insurance.

The Employer argues that the “Reynolds test” has been met in this instance for a number of reasons, first because health insurance inherently involves a different definition of “status quo” than other benefits, because the quality of the services is not fixed, but improves with technology and medical sophistication over time. The Employer also argues that the true definition of the status quo would be a fixed dollar contribution by the Employer with a full allocation of any increases to the employee. But even if a more demanding definition of “status quo” is chosen, the Employer argues that a need for the change has been amply demonstrated by the fact that premium dollars set aside in two recent years left the fund deeply in debt, while the Village has already taken a number of steps to control costs, including self-funding and use of in-network and out-of-network providers. Similarly, the Employer contends, there is a reasonable relationship between the problem and the Village’s proposed

solution, because there are studies and other factual information, as well as basic logic, to support the contention that cost-sharing reduces overall costs. And finally, the proposed solution does not create an unreasonable burden on employees, demonstrated by the fact that another union representing Village employees has agreed to that level. The Employer also points out that there are other comparable employers in the list which also have similar percentage employee contributions, while the wage comparison with those communities demonstrates that Germantown DPW employees are not receiving low wages in exchange for their particularly rich insurance benefits.

With respect to the pager pay issue, the Village argues that the comparability data is not meaningful, because the data simply do not show who receives the monetary payments among the external comparables or what level of work the employees in other units are actually performing for the pay. Finally, the Employer responds to the Union's objection to the manner in which the Village's health insurance premiums have been set by pointing out that the Village has used an outside insurance consultant whose recommendations have been followed, and that there is no evidence at all that the Village has manipulated premium levels to achieve any particular result. If anything, the Village argues, it set the premium levels too low, because it is self-evident that it needed a \$400,000 transfer of funds in 2004 to maintain the program's solvency. In summary, the Employer argues that the central issue is whether the Union should be permitted to prevent employees from taking on a true share of responsibility for health insurance premium increases in future, through a modest but noticeable percentage contribution toward the cost of their insurance.

The Union's Position

The Union characterizes the key difference between the offers as being the Employer's quest for a percentage premium sharing strategy, in the face of a Union offer, for the first time, for employees to pay a portion of the health insurance premium along with dramatic increases in employee out-of-pocket costs for health insurance. The Union also notes that its wage offer is lower than the Village's offer.

The Union characterizes the evidence as showing nothing with respect to the lawful authority criterion or the ability of the Village to pay for either offer, or any relevant changes in circumstances during the pendency of this proceeding. The Union argues for a comparability group to include Brown Deer, Cedarburg, Grafton, Hartford, Menomonee Falls, Mequon, Muskego and Port Washington. The Union notes that this is the first interest arbitration involving the Department of Public Works in Germantown, as opposed to the Police Department, pointing particularly to an award in Menomonee Falls by Arbitrator Joseph B. Kerkman which concluded that prior comparables set in a law enforcement unit were not necessarily determinative of the appropriate comparables for a DPW unit, as well as to several other awards to the same general effect. The Union argues that in the cited Menomonee Falls award, and also in arbitrations involving the City of Mequon and the City of Hartford, Germantown was found to be a comparable, so the reverse logically should also apply. As additional reasons, the Union argues that its proposed comparables add in the two municipalities that are contiguous with Germantown, and that Hartford is closer to Germantown than either Muskego or Port Washington. The Union also argues that adding these communities brings the average of population much closer to that of Germantown and that these communities' addition would also bring the average of the comparables closer to Germantown in property value, per capita value, local tax, levy rate and adjusted gross income. The Union concedes that Mequon is significantly more wealthy,

but points to proximity, levy rate, population and geographic size as factors supporting its inclusion. The Union also argues that without its three proposed additions, the one third of this bargaining unit that work in the Water and Wastewater Departments are effectively left without sufficient comparables, because only two of the five remaining comparables have contracts governing such departments, while Hartford and Menomonee Falls contracts cover them and Mequon at least covers Wastewater employees (water supply for Mequon is contracted through the Milwaukee system.) Also, four of the original five comparables are geographically very small, so that Germantown employees are responsible for road maintenance and plowing over a much larger area; Germantown covers 34.4 square miles, while four of the five law-enforcement comparables are approximately 4 square miles apiece; Hartford has six square miles while Muskego, Menomonee Falls and Mequon range between 31 and 46. The Union notes also evidence from a local newspaper article that the Germantown Village Administrator has twice used the same communities in studying the Village's wage structure in the past. Furthermore, the Germantown School District, which is coextensive with the Village, has used all eight of the communities that the Union proposes here.

The Union argues that the internal comparables do not demonstrate an established pattern. Only one bargaining unit has agreed to pay 6% of the health insurance premiums and has agreed to the "Plan 3" benefit structure. Thus while the Village may be seeking internal consistency, there is no previous pattern of that consistency to rely on. The Union also believes it should get some credit for agreeing to rationalize health plan terms such that Plan 3 will go into effect, not only reducing benefits, but also simplifying the choices and improving consistency across bargaining units. The Union points to a significant series of changes in that plan compared to the previous plan, including a change from zero deductible to \$100 single and \$300 family deductibles; a change from coinsurance at 90% in network and 80% out of network up to the first \$2000, moving to \$3000 in each case; a change from out-of-pocket maximums of \$200 single and \$500 family in network to \$400 single and \$1100 family, with the out of network equivalents moving from \$400 single and \$1000 family to \$700 single and \$1900 family; a charge of \$10 for generic drug prescriptions for the first time and an increase from \$5 to \$20 for brand name drugs; and a predicted increase in the cost of well baby care. The Union calculates the potential adverse effect on employees at up to about \$1250 family within the network and up to about \$1550 for family plans out of network, with approximately \$460 to \$560 for single plans. The Union argues that these are large and voluntary concessions by the Union which will have a substantial effect on the average employee even if the maximum is unlikely to be endured by every employee in every year, and that the Employer's further demand for a percentage contribution is excessive.

The Union analyzes the Employer's claim that the large 2003 wage settlement with the Dispatchers represented catch-up to other similar groups in the area in the following terms: using the 8 municipalities in the Union's proposed comparability group, the Union finds Germantown's dispatchers fifth of eight at the starting rate in 2001; fourth of eight at the top rate in 2001; fifth of six at the start rate in 2002; third of six at the top rate in 2002; but their rates then increasing by 11.2% in the starting rate and 12.3% at the top rate in 2003, far outpacing the pattern among comparable units (or internally.) The Union argues that it is unusual for an employer to propose catch-up money when the unit in question is in the middle of the comparables, and that it is no coincidence that this wage increase took place at the same time as the 6% premium sharing.

The Union argues that the Employer's claim that shared ownership of health insurance premium costs is important is just rhetoric, with no evidence submitted to support the Village's position that only through percentage sharing will employees act to contain costs. The Union points to the largest

increases in the history of Germantown's health insurance plan having occurred only since some of the employees have been paying a percentage of the health insurance premium, and argues that from the limited data, a supportable argument could be made that employees instead react with a mentality of "if I'm going to be paying for this, I may as well use it." The Union avers that a much better argument can be made that direct payment by employees is more likely to affect health insurance costs, so that the Union's agreement to have employees pay more for brand-name drugs and for generics, and pay more for both deductibles and coinsurance, is a significant and real-world set of changes that will help to contain costs.

The Union argues that external settlements also support its proposal. While rapidly rising health costs are a fact of life, the Union proposal recognizes this, and has made major concessions in both the plan design and in premium sharing. The Union contends that Germantown's health insurance costs, while increasing substantially, remain below most of the comparables. The Union costs Germantown's rates even in 2005, following the 25% increase projected for the current year, at far below the average for the comparable employers. Nevertheless, the Union points out, it has been willing to modify the status quo both by agreeing to the plan changes already noted and by its agreement to have employees pay part of the premium for the first time. The Union argues that while 2005 settlements are unavailable, for 2003 the Union proposal now has the DPW employees paying the third-highest employee contribution out of eight, and for 2004 the Union proposal places employee contributions in Germantown fifth highest out of eight. As middle of the pack rankings, the Union argues, this supports the reasonableness of its proposal, particularly in view of the fact that this Employer has by far the lowest actual costs for health insurance compared to the comparables.

The Union argues that despite its relatively low insurance costs, the Employer is not paying higher wages, characterizing Germantown wages as merely in-line with the overall comparable grouping. The Union calculates Germantown wages in the year prior to this contract as being sixth out of nine comparables for the Highway Equipment Operator, third of five for the Wastewater Operator and third of six for the Water Operator. Such middle of the pack rankings, the Union argues, provide no support for the Employer's proposal to proceed to a more adverse health insurance premium sharing arrangement. The Union also argues that the support staff employees of the Germantown School District continue to have 100% employer-paid health insurance through June 30, 2005.

The Union argues that the Village proposal is a dramatic change from the status quo and carries an appropriate burden, found by many arbitrators to amount to demonstration of a need to make a change; demonstration that the proposed change can reasonably be expected to remedy the situation; and demonstration that the change will not impose an unreasonable burden on the other party. The Union argues that the Employer in this instance has failed all three requirements. Need is not demonstrated because the Village pays far less for insurance per employee than any of the other surrounding municipalities. An appropriate approach to the remedy, if the need were demonstrated, is also not demonstrated, because the Employer has made no showing that percentage premium sharing will serve to contain premium increases; the Union points to an award by Arbitrator June Weisberger in Plymouth School District³ to the effect that other types of approaches are more likely to have real impact on health insurance costs, and argues that the Employer approach here is simply an effort to

³ Dec. No. 26838-A (11/91)

shift costs from the Employer to the employees, without actually controlling escalating costs. The Union further argues that the Employer has failed to demonstrate that the burden is not unreasonable on employees, because the Village is already getting substantially greater contributions toward annual health-care costs in this contract than employees in comparable public employment are making, and the Village's proposal compounds those costs.

The Union argues that the overall costs of the parties' proposals are quite comparable, and that in fact the difference in the economic impact is minimal, calculating that the Union's proposal, over three years, costs the Employer a total of additional \$1847 in comparison to an overall three-year cost of over \$3.8 million for this unit; a different calculation using different assumptions produces a three-year total difference of only about \$300. This also means that the cost of living factor is not relevant, since both offers cost about the same.

The Union further argues that the Village's health insurance calculations are based on its claim that employees would have a sense of ownership of the health plan with a percentage contribution, but that the numbers presented by the Village strongly suggest that the premium has been set arbitrarily, calling into question how much ownership any employee would feel. The Union points to the fact that the Village currently has three separate plans with widely varying benefits, but is unable to distinguish different premium levels for the various plans. The Union also notes that the ratio between the family and the single premium is sharply at variance with all of the other comparables, at 1.856 for 2003 and 1.944 for 2004 when all of the comparables have ratios between 2.3 and 2.8. The Union contends that this too is a form of arbitrariness which brings into question the accuracy of the Employer's predictions and calculations in other respects.

The Union notes that both parties acknowledged at the hearing that the pager pay proposal is a minor factor in comparison to the health insurance difference, but argues that to the extent that there is evidence in the record, the Village's evidence includes a previously nonrepresented unit in Grafton that is in the process of negotiating a first contract, while the Grafton DPW does not have on-call requirements, with a similar situation prevailing in Cedarburg. Nevertheless, the Union notes, Cedarburg's water utility arrangement is supportive of the increases that the Germantown Union is attempting to achieve. The Union argues that its proposal would get Germantown on-call pay up to the level of the lowest in the Union's grouping, Menomonee Falls, while the Village's proposal falls far short.

In its reply brief, the Union contends that there is an error in the Employer's costing in its exhibits which is repeated in the Village's brief, and which results in the Village showing an annual cost of wages for 2005 at some \$10,000 lower for the Village proposal for that year than is actually the case. The result is that the Village's proposal is only about \$1100 less costly overall than the Union proposal over the course of the contract, using the Village's own data.⁴ The Union also argues that contrary to the Village's contention that turnover in the DPW is low, Union Exhibit 4, a seniority list supplied by the Village, shows that 14 of 25 employees have less than five years' seniority, a higher than average turnover rate. The Union also objects to the Village's characterization of the Union as a

⁴ The brief describes the Village's proposal as more costly than the Union's by this amount, but this is clearly a misprint based on the Union's accompanying chart.

“lone holdout,” noting that the police continue to have premium sharing of \$20 through 2004 for family as well as single plans, while the Union’s proposal goes to \$25 for 2003 and \$30 for families in 2004. The Union also argues that when the Dispatchers local agreed to the 6% premium sharing, they received improvements in the deductible, to \$100 for individuals and \$300 for family plans from the former \$200/\$500 respectively, in addition to the very substantial wage increase. Assessing all of the health insurance data for all of the units, the Union summarizes the pattern by saying that there is no pattern, and that the Employer’s argument that it seeks consistency is not based in any existing fact. The Union also argues that the nonrepresented employees should not be used as a comparable because these employees have no say in the level of benefits; that the Employer’s comparison to the private sector is without data to support it; that the Village offered no evidence as to what comparable communities are paying for health insurance, a critical shortage of substantiation of its proposal; that the Village’s claim that the Union does not have any concern for citizens is objectionable, and demonstrated as wrong by the overall cost of the Union proposal compared to the Village’s proposal; and that the lack of internal comparables for the on-call proposal, which the Village relies on, is inappropriate in that there is no need for on-call work by either of the other units. Finally, the Union argues that far from the Village relying on the “20% rule” it cites with approval from a prior arbitration decision finding some communities to be comparable, only Muskego, the farthest away geographically from Germantown, fits that rule among the five Employer’s the Village wishes to rely on; the others are more than 20% less than Germantown in population, property value and local tax, and are also slightly below Germantown in per capita value. Similarly, the others are all 38% or more higher than Germantown in levy rate, and about one-eighth the physical size of Germantown. Thus, the Union argues, the comparables that the Village wishes to rely on are actually less comparable than the mix the Union proposes here.

Discussion

Costing:

I agree with the Union that Employer’s Ex. 4, its chart of costs for this unit, contains errors such that it shows the Employer’s wage offer as costing some \$5,000 less than the Union’s offer for 2005. That is not possible, given that the effect of the Employer’s 3.5% for 2004 carries over into 2005 and given that the current-year cost of the Employer’s split increase is if anything slightly higher than the Union’s 3%, because of a small compounding effect. The Union’s calculation that the overall cost difference between the parties’ proposals narrows as a result, to a margin of only about \$1100 on the \$3.8 million package, appears justified.

Comparability:

I note that Arbitrator Vernon, in his 1994 award, was invited by the union there to analyze the comparables for Germantown’s law enforcement unit partly in terms of criteria that are particularly applicable to a law enforcement unit (e.g. number of employees in the bargaining unit and ratio of citizens per police officer.) Geographic proximity and square miles of the argued comparables were also at issue at that time (Vernon Award, page 3.) Yet Arbitrator Vernon’s finding of appropriate comparables was made primarily in terms of criteria which also apply to this unit, except for the number of staff, and neither contiguous location nor land area was given much note. For this reason

and because a subsequent arbitrator also gave substantive consideration to a request to modify the comparables and concluded that there was great value in stability, I find that while the Union's proposed additions to the comparable list have some logic behind them, that logic is not so compelling as to outweigh the value of predictability and stability once a comparable pool is set. In reaching this conclusion I am also influenced by the Employer's well-taken objection that the Union has included two communities that are contiguous to Germantown but substantially richer, and one (Hartford) which is at a substantial distance and a less probable comparable on several other grounds, while omitting other communities, argued for by one or the other party in the prior arbitrations, which in general terms would appear to have as good a claim to inclusion as at least Hartford. Thus I am faced with a proposal of a list of existing comparables which are notably deficient only in their shortage of departments paying pager pay/on-call pay, versus a list which has its attractions, but has no common theme that is sharply distinguishable from still other employers which are not proposed here for the pool. I conclude that under these circumstances there is no compelling reason to make a change in the prior comparable list, even though that list was initially established with a different type of employment in mind.

Pager pay/on-call pay:

Of the substantive issues presented by this matter, it is clear that the dominant one is the health insurance employee contribution. The pager pay/on-call pay issue received relatively scant attention from both parties, and the record is devoid of any evidence as to what employees in either party's selection of comparables actually does to earn the pager pay. Since conditions attached to such pay often vary from one employer to another, without some data to support the Union's implied argument that the higher paid units in this respect are subject to the same requirements while carrying a pager, it is impossible to make any but the most general conclusions about comparability. That leaves the size of the increase as the remaining factor. The Employer proposes to increase the rate by 30% over three years. The Union proposes to increase that rate by 60% over the same period. Clearly, the Employer's proposal is a substantial percentage increase, far above the CPI or any other percentage linked to time over the period of the forthcoming contract or the preceding one. The Village's proposal therefore appears more reasonable. As both parties have recognized and as noted below, however, this issue counts for relatively little in the overall balance.

Health insurance contribution:

I do not agree with the Employer's contention that the stipulated issues are of little importance here. The Employer has sought for a number of years to obtain changes in health insurance provisions, of a number of kinds. In effect, the Employer has now succeeded in a substantial variety of ways. The Union has agreed to increase the amount subject to coinsurance; to increase the charges for brand-name drugs; and to introduce charges for generic drugs. As the Employer forthrightly notes, the agreed-upon changes result in the maximum out-of-pocket expenses for a single employee using the in-network plan moving from \$200 up to \$400, and for one using out of network providers, from \$400 up to \$700. For an employee taking family coverage, the maximum out-of-pocket goes from \$500 up to \$1100 if within the network, and from \$1000 up to \$1900 if using out of network providers. These are not trivial increases.

Furthermore, the Union proposal includes for the first time an employee contribution to the premium. While this is expressed in fixed dollars in each year, it is notable that the amount increases from year to year, such that the family premium share by an employee increases by 40% from 2003 to 2005, with the single plan employee share increasing by a similar percentage. This goes a long way toward undercutting the basis of the Employer’s fundamental point, which is that employees will not feel any responsibility for ownership of health insurance costs if they do not see a percentage share of the resulting premiums applied to them. It is notable, in fact, that the Employer’s argument is presented as a theory which is expected to be self-evident as to proof; not only is no actual proof of the efficacy of percentage payments presented in the record,⁵ but the Employer’s argument also demands a belief that employees will recognize a clear trend toward higher out-of-pocket costs to themselves if those costs are expressed as a percentage, and will therefore move toward more cost-effective health care choices, but that they are incapable of interpreting successively higher dollar amounts year by year in the same terms. Although clearly a percentage approach provides a more automatic connection between an increased premium and an increased charge-back to employees, there is nothing in the record to demonstrate that employees in this bargaining unit are incapable of recognizing that further increases in premiums are very likely to result in strong pressure towards further increases in the bargained levels of dollar contributions by employees year by year.

The Employer, meanwhile, makes a strong point in its assertion that health insurance costs have been increasing so rapidly, and that these have become such an important element in overall costs, that action is required. This argument is certainly a powerful one on the facts presented. But it does not overcome, in and of itself, the pattern of facts established both internally and externally among comparable bargaining units. Here, the external comparables do not help the Employer’s case, because even after the 2005 premium increase of 25%, Germantown continues to have relatively favorable insurance rates, in terms of the rates being endured by the comparable external employers.

Table 1: (source: Union’s Ex. 9, Employer’s Ex. 6, 11, 12))

	2003 single: employer/ employee	2003 family: employer/ employee	2004 single: employer/ employee	2004 family: employer/ employee	2005 single: employer/ employee	2005 family: employer/ employee
Brown Deer	\$397 / \$20 (existing) 7.5% (new employees)	\$1091/ \$50 (exist.) 7.5% (new)	\$394 / \$20- 30	\$1035 / \$50 or 7.5%	unknown	unknown
Cedarburg	\$345 / \$0	\$1046 / \$0	\$385/ \$15	\$983/ \$15	unknown / \$20	unknown / \$20
Grafton	\$420 / NS	\$1046 / NS	unknown	unknown	unknown	unknown
			unknown /	unknown /	unknown /	unknown /

⁵ The RAND study cited in the Employer’s brief was not offered into the record.

Muskego	\$399 / \$5	\$1038 / \$10	5% (\$32 cap)	5% (\$64 cap)	5% (\$35 cap)	5% (\$70 cap)
Port Washington	\$422 / \$0	\$1137 / \$0	\$527 / 1%	\$1381 / 1%	unknown / 1%	unknown / 1%
Average of employer share	\$397	\$1072	\$435	\$1133	unknown	unknown
Germantown (Employer)	\$388 / 2%	\$720 / 2%	\$399 / 4%	\$777 / 4%	\$489 / 6%	\$950 / 6%
Germantown (Union)	\$385.50 / \$12.50	\$710 / \$25	\$401 / \$15	\$779 / 4%	\$502.50 / \$17.50	\$976 / \$35

Even if it is assumed that the Germantown premium as of 2005 might fairly be ascribed to 2004, to take account of the fact that Germantown had to make a very large emergency allocation from the general fund in 2004, Table 1 still shows that Germantown is not doing as badly in terms of premium expenses as its municipal peers. Since there has not been a wholesale movement toward significant percentage contributions among those peers, the Employer's proposal here must suffer by that comparison.

At the same time, if Germantown were by far the highest paying employer in wage terms among the comparables, that might argue for a relative need to move to percentage contributions ahead of some of those who are paying even higher premiums than Germantown is; but Table 2, incomplete as the data are, implies that Germantown's wages in the DPW are typical for the peer group, not at the head of that group.

Table 2: 2002 top wage rates (summary from Union's initial brief)

	Highway Eqpt. Op.	Wastewater Op.	Water Op.
Brown Deer	19.43		
Cedarburg	19.73		
Grafton	19.28		
Muskego	19.73	19.73	19.73
Port Washington	20.81	20.58	20.58
Average	19.80	20.16	20.16
Germantown	19.68	19.82	19.82

The internal comparables, meanwhile, also fail to convince me that the Employer has made the appropriate move toward the consistency which it seeks. First, it is apparent that there has been no consistency in wage increases or health insurance plans, at least in recent years, within Germantown Village employment. I can ascribe only very minor weight to the rapid move toward larger employee percentage contributions that has been applied to the non-represented employees, for all of the reasons for which nonrepresented employees are customarily regarded as not truly comparable to employees represented by a labor organization. The Union’s proposal here places this bargaining unit on terms broadly similar to the law enforcement unit (with a higher family premium contribution and a lower single one in each of the three years, but all expressed in fixed dollars.) Thus the Employer is left to argue that its percentage approach represents what the law enforcement union will agree to with the Employer shortly, with no evidence that any such agreement has in fact been reached. That leaves the Dispatchers bargaining unit.

It is the Dispatchers’ contract that the Employer primarily relies on here. The fact that one bargaining unit has straightforwardly agreed to a 6% premium share as of 2003 is entitled to significant weight, because even without great consistency in the past in the Village’s handling of health insurance plans and premiums, for good reasons it is customary for arbitrators to give substantial weight to such an internal comparable.

The Union’s evidence, however, is more compelling than the Employer’s with respect to the circumstances of the Dispatchers’ 2003 agreement to that insurance contribution. While the Employer blandly describes the 2003 wage package for the dispatchers as “variable,” and as a response to sharply higher wages among the external comparables for that unit, there is no evidence in the record to demonstrate that the dispatchers in Germantown have notably greater responsibilities than the average of their comparables.

Table 3 (source: Employer’s Ex. 19, Union Ex. 11)

	2001 start	2001 top	2002 start	2002 top	2003 start	2003 top
Brown Deer	(no data)	(no data)	(no data)	(no data)	(no data)	(no data)
Cedarburg	11.44	15.01	13.18	16.33	(no data)	(no data)
Grafton	12.82-13.08 (split increase)	14.97- 15.27	13.47- 13.74	15.73-16.04	(no data)	(no data)
Muskego	11.93	15.90	(no data)	(no data)	(no data)	(no data)
Port Washington	12.50	14.13	12.94	14.62	(no data)	(no data)
Average	12.21	15.04	13.24	15.61	(no data)	(no data)
Germantown	12.56	15.52	13.00	16.58	14.46	18.62

Table 3 demonstrates that a wage package which was already well up in the same range of comparables argued for by the Employer advanced in 2003 by a very significant amount, at exactly the time that the Employer succeeded in negotiating its 6% premium contribution as desired. On these facts, the conclusion is logical that much of that wage package was probably an all but explicit quid pro quo for a major change in insurance.

Here, however, the Employer is offering not an 11 to 12% wage increase, but a .5% increase in 2004 beyond the Union's 3%, plus a 2% and 2% split in the third year instead of the Union's straight 3%. These additional "kickers" are well short of what the Dispatchers appear to have been offered to secure their agreement to a percentage contribution of substantial proportions. Furthermore, the .5% and the split are proposed as part of a round of bargaining in which the Union here has already agreed to a near-doubling of the potential annual health cost exposure of both single and family plan participants, as well as to family plan employee premium contributions (i.e. for most of the unit) that exceed the existing rate in the law enforcement bargaining unit, and which essentially match or exceed the Employer's percentage proposal, when converted into actual dollars, for two out of the three years of this contract.

The result is that I conclude that while both proposals are reasonable in overall terms, the Employer has compounded an already substantial series of changes in health insurance with a proposal which seeks a further change, of a kind and level that alone is generally regarded as substantial. That change is not supported by the balance of either the internal comparables or the external comparables, and is presented with well-articulated arguments which draw their essence from a claim of inherent logic rather than from demonstrated experience. It therefore fails to demonstrate a "need" for the change, as that term is usually defined. Along with this, the same logic of the Employer fails to establish either that a change to a pattern of rising percentage contributions by employees expressed in percentages will probably result in lower utilization or more cost-effective employee health care choices, or that a change to a pattern of rising contributions expressed in dollars will not. The "effective remedy" element of the three-pronged test is therefore also not met. Finally, the "quid pro quo" element is also not met, in an environment in which the Employer proposes a .5% wage add-on in the second year of the contract plus a 1% add-on for the future (with the same current percentage increase during the third year as the Union's offer) in wages, where apparently it has previously found a much larger incremental improvement in wages to be an acceptable trade-off to obtain the same insurance provision.

The Statute's Weighing:

No evidence was adduced to indicate that either the "greatest weight" or "greater weight" factor under section 111.70(4)(cm)7 is material here. No evidence was adduced as to the lawful authority of the employer, while the stipulations of the parties include a series of changes that will raise employees' likely costs for health services substantially and may have an impact on utilization; this factor therefore favors the Union's offer. The interests and welfare of the public and financial ability criterion, at one level, is essentially neutral because the costs of the proposals are so close, but I interpret this criterion on other grounds as slightly favoring the Employer's proposal because it is widely recognized that municipal employees now enjoy notably better insurance protection than most of the private sector citizens they represent, and this deserves at least some recognition and weight.

Internal comparability favors the Union's proposal because that proposal matches or exceeds the level of employee contribution to health insurance in one of two bargaining units, while the Employer's proposal seeks to match the other bargaining unit without coming close to the wage improvements apparently offered as incentive to obtain that agreement. External comparability favors the Union's proposal because even though Germantown is enduring sharply higher health insurance costs, it is not out of line with other municipal employers to which it can fairly be compared, and indeed those employers are enduring still higher costs without having moved predominantly to the type of employee percentage contribution the Employer demands here. The comparison to the private sector slightly favors the Employer's proposal, but this is not a strong factor because of the poor quality of the data and because the pattern of better health insurance for municipal workers is general, not specific to this particular bargaining unit, and is therefore presumably registered in the general bargaining among external and internal municipal comparables as well. The cost of living factor is essentially neutral because the packages offered by both parties cost almost the same amount over a three-year agreement. Within "overall compensation," the unjustified level of the Union's pager pay/on-call pay proposal adds a minor weight in favor of the Employer's final offer, but not enough to push this factor into the Employer's "column" in general; the overall compensation factor still generally favors the Union's proposal because the Union's wage package, even including the pager pay, is adequately counterbalanced by a significant series of adverse changes in insurance, while the Employer's wage proposal fails to take into account the additional insurance element sought by the Employer. Finally, the "changes in the foregoing circumstances" factor slightly favors the Employer's proposal because of the effects of the parties' stipulation at the hearing that the "Plan 3" insurance terms would be applied only prospectively, at a one-time savings to employees compared to if they had been applied retroactively.

Summary

While in the future it is certainly possible that further increases in health costs may compel a move to the percentage-based employee contribution which the Village seeks here, the factors favoring imposition of that approach as part of this collective bargaining agreement are outweighed by the substantial moves toward health care economies which the Union agreed to as part of this round of bargaining; by the shortage of proof that the Employer's approach would actually make a significant difference in usage; and by the relatively low level of the proposed quid pro quo. The remaining factors are relatively minor on the facts of this case and are somewhat balanced between the parties. On balance of all of the factors, therefore, I conclude that the Union's proposal better fits the statute's requirements.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

That the final offer of the Union shall be included in the parties' 2003-2005 collective bargaining agreement.

Dated at Madison, Wisconsin this 28th day of March, 2005.

By _____
Christopher Honeyman, Arbitrator