

BEFORE THE ARBITRATOR

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

VILLAGE OF WINNECONNE

and

VILLAGE OF WINNECONNE EMPLOYEES UNION, LOCAL 1838, AFSCME, AFL-CIO

WERC Case No. 8, Int/Arb 11155  
Decision No. 32610-A

Appearances:

Davis & Kuelthau, SC, by Tony J. Renning, Esq., 219 Washington Ave., Oshkosh, WI 54901, appearing on behalf of the Employer.

Ms. Mary B. Scoon, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, W5670 Macky Dr., Appleton, WI 54130, appearing on behalf of the Union.

**ARBITRATION AWARD**

The Union has represented a bargaining unit of Department of Public Works employees for many years. On April 3, 2008, the Village filed a petition with the Wisconsin Employment Relations Commission requesting arbitration with respect to the replacement for the parties' collective bargaining agreement which had expired December 31, 2007. Following mediation by a member of the Commission's staff, the Commission determined by order dated November 6, 2008 that arbitration was required. The undersigned was appointed by Commission order dated January 27, 2009.

A hearing was held in Winneconne, Wisconsin on April 9, 2009, at which time the parties were given full opportunity to present their evidence and arguments. Briefs, reply briefs and supplementary clarifications were filed by both parties, and the record was closed on October 5, 2009.

**Statutory Criteria to be Considered by Arbitrator<sup>1</sup>**

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<sup>1</sup> The statutory criteria are shown as of the date of the hearing. Subsequent changes enacted as part of the 2009 budget bill do not affect the bargaining unit in question, and it is uncertain whether or not they apply to pending proceedings, for reasons discussed in the award in Iowa-Grant School District, Int/Arb 11293.

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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
- e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes, 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**

Modify Article XX, Group Health Insurance, as follows:

Effective January 1, 2008, the Village will contribute ninety-five percent (95%) of the monthly premium rate of the lowest cost qualified plan in the area available through the Wisconsin Department of Employee Trust Funds -- Wisconsin Public Employers Group Health Insurance Plan toward the premium rate of any qualified plan in the area available through the Wisconsin Department of Employee Trust Funds -- Wisconsin Public Employers Group Health Insurance Plan for either single or family coverage.

### **The Union's Final Offer**

#### ARTICLE XX -- GROUP HEALTH INSURANCE

Effective January 1, 2008, employees shall contribute thirty (\$30) dollars a month towards the premium rate of any qualified plan in the area available through the Wisconsin Department of Employee Trust Funds -- Wisconsin Public Employers Groups Health Insurance Plan for either single or family coverage. The Village shall contribute the remainder of the premium rate of the lowest cost qualified plan available through the Wisconsin Department of Employee Trust Funds -- Wisconsin Public Employers Groups Health Insurance Plan for either single or family coverage.

Effective January 1, 2009, employees shall contribute forty-five (\$45) dollars a month towards the premium rate of any qualified plan in the area available through the Wisconsin Department of Employee Trust Funds -- Wisconsin Public Employers Groups Health Insurance Plan for either single or family coverage. The Village shall contribute the remainder of the premium rate of the lowest cost qualified plan available through the Wisconsin Department of Employee Trust Funds -- Wisconsin Public Employers Group Health Insurance Plan for either single or family coverage.

### **The Employer's Position**

The Employer costs the difference between the two proposals at \$6048.24 for the first year and \$5069.64 in the second year.

The Employer notes that the parties have not previously used interest arbitration and that there is no established set of comparables from the other (Police) bargaining unit of the village. The Employer argues for a list consisting of the City of Brillion, City of Clintonville, Village of Combined Locks, City of Green Lake, City of Omro, City of Princeton, Village of Redgranite, City of Seymour and City of Waupun. The Employer notes that these are communities of similar size to Winneconne, with average population of 2836 compared to Winneconne's 2516, and that they are located within an average of 34 miles of Winneconne. All are organized by labor unions, and the Employer argues that all of these communities have a similar economic base and similar tax resources. The Employer argues that the Union's list of communities argued as comparable are also organized bargaining units with similar positions and are in the same labor market, but that the Union's list (except for Omro and Combined Locks) are far larger than Winneconne and have very different economic bases and tax resources.

The Employer notes that it has been a participant in the State Health Plan for a number of years, and contends that since 2003 the Village's contribution toward health insurance premiums was supposed to be based on the lowest cost qualified plan available through that system.<sup>2</sup> In practice, two providers have accounted for all employees, and have alternated as lowest, but recently the least expensive has been Network Health Care. In 2007, one employee enrolled in Network's family plan and one in Network's single plan; five employees enrolled in United's family plan and one in United's single plan. The same pattern continued in 2008 and 2009. The Employer argues that it is a well-accepted principle that the parties have a shared responsibility for controlling health insurance costs, and contends that the Union's proposal fails to acknowledge this. The Village argues that its restatement of employee contributions as a percentage, as well as the increase in the employee contribution, is reasonable in view of the rapid increase in health care costs. The Employer calculates this as an increase from 1998 to 2009 from \$171.82 to \$547.20 for single employees on the Network plan, and from \$184.96 to \$585.10 for single employees on the United plan. For family employees, costs for the Network plan increased from \$435.10 to \$1364.30, while costs for the United plan increased from \$467.96 to \$1459, over the same period. All of these represent premium cost increases over 200%, compared to the CPI increase of only 30% over the same time.

The Employer argues that up till 2003, employees contributed nothing toward any of these costs, while since January 1, 2003 through the most recent contract, employees have contributed \$15 a month whether taking the single or family plan, but have not experienced an increase of any kind in their contribution toward health insurance premiums since January 1, 2003. The Employer argues that the Union's current proposal moves the dollar figure upward, but still results in single employees paying a higher percentage toward the premium than family employees, unlike any of the comparables, and that it represents only 3% of the cost of family coverage for the lowest cost qualified plan even in 2009. The

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<sup>2</sup> See Discussion below as to this contention.

Employer argues that its proposed 5% employee contribution towards health insurance represents an increase of 1% for single coverage and 3.5% for family coverage from 2007 actual levels. This, the Employer argues, is hardly a major amount, and is further lessened in impact by the fact that the Village has a Section 125 flexible spending plan, so that premium contributions can be structured to be free of tax. Furthermore, the Employer argues, the Union's proposal to maintain the employee contribution as a fixed dollar amount is out of step with the times, citing a recent arbitration award in Village of Ellsworth by Arbitrator Herman Torosian.

The Employer argues that there is an internal settlement pattern, based on the fact that the Police union has accepted the same health insurance proposal, albeit to start in 2009. Citing many arbitration decisions over the years, the Employer argues that once an internal settlement pattern has been established, arbitrators give it great weight. As to external settlements, the Village contends that the employee contributions required under its proposal are below the prevailing comparable rates by about 3%, calculating that employees in the Village's list of comparables are contributing about 8% towards their health insurance premium compared to 5% under the Village's proposal. The Employer notes that in 2009, under the Union's offer, employees taking a single plan will contribute 8%, but those taking the family plan contribute only 3%. As to percentage versus fixed dollar amounts, the Employer calculates that six municipalities in its comparable list specify employee contributions in percentage terms, while the other three use a combination of a percentage and a dollar cap. The same is true for Winnebago County employees, who are required to contribute 15% of the premium to a maximum of \$95 single or \$190 family. The Village notes that even the Union's comparables show a majority using a percentage employee contribution. The Employer also calculates 2008 employee monthly contributions among its asserted comparables as an average of \$39 for single premium and \$96 for family premium, rising to \$46 for single premium and \$111 for a family premium in 2009. Compared to these numbers, the Employer argues, its proposal is modest indeed, although it costs the employee premium shares for the United plan in 2009 at \$65 for single and \$163 for family, with Network at \$27 single and \$68 family respectively. The Employer describes as "nothing" the employee share generated by the Union's proposal if the employee selects Network (\$30 in 2008 and \$45 in 2009, for either single or family) and "almost nothing" if the employee selects United (\$54 single and \$90 family in 2008; \$55 single and \$71 family in 2009.) The Employer also argues that the State Health Plan offers a very high level of insurance benefits, unlike comparables which have plans with significant deductibles and co-pays.

The Employer argues that no quid pro quo should be required for "restating" the health insurance contribution as a percentage as well as for increasing the premium contribution by employees, both because the comparables overwhelmingly support the Village's position and because of the generally accepted principle that the status quo is already changed by the seriously advancing health care costs. Even so, however, the Village's offer does include a quid pro quo: by providing a 3.8% increase in 2008 and a 3.1% increase in 2009, the Village argues, it has provided a quid pro quo, because the comparables have an average increase in wages for both years of 3%, while the Village is already a wage leader.

The Village makes a point of arguing that equity and accountability are encouraged by the structure of its health-care proposal, because the interests and welfare of the public are advantaged if employees who select the more expensive health plan must pay for that. The Village contends that the Union's offer removes the incentive to reward the least costly provider, and thereby insulates employees from the true cost of providing health benefits. The Village also claims that the overall compensation factor strongly favors the Village's offer, calculating that the Public Works Laborer classification in 2007 was ranked fourth out of nine comparables, and earns between \$1.57 and \$1.61 above the comparable average, depending on whether longevity is included; these numbers rise by several cents in 2008 and 2009. For the Wastewater Operator classification, the Village also ranked fourth among nine comparables, with a maximum wage rate \$1.09 above the average, a figure which would also grow over the term of this contract. The Village argues that this picture is augmented by exhibits demonstrating that longevity, health insurance, vacation, holidays and sick leave add to wages to demonstrate a highly competitive package that is near the top of the external comparables.

Finally, the Village contends that the "greatest weight" factor favors the Village's offer, because the amount of money the Village can raise is limited by state law, and that the "greater weight" factor also favors its position, because the national, state and local economies are struggling.

In its reply brief, the Village contends that the Union has erroneously described the status quo, distorting the difference between the parties' final offers. The Village states that it is paying the cost of the lowest cost qualified plan minus the \$15 employee contribution, but employees enrolled in the higher cost plan must contribute the difference between the higher cost plan and a lower cost plan in addition to the \$15 per month. Under the Village's proposal, it argues, employees who continue to enroll in the higher cost plan would contribute the difference between that plan and the lower cost plan, plus five percent of the lower cost plan per month. The Village also argues that the Village's offer exceeds what revenue limits allow for as a percentage rise, and that in addition, the struggling economy favors the Village's offer in comparison to the Union's larger proposal. The Employer objects to the Union's proposed list of comparables, and particularly argues that Neenah and Oshkosh are grossly inappropriate, because even more than the others, they dwarf Winneconne in size. And the Village argues in detail that the Police settlement constitutes an internal pattern, because there is only one other bargaining unit that could constitute a pattern, while the health insurance ultimately agreed to by the Police union is the same as proposed here and the wage increase is generally comparable.

In the latter respect the Employer argues that for a similar two year period, i.e. "the year of implementation and the following year", the Police agreement includes wage increases of 4% and 3.5%, for a two-year total of 7.5%, while the Village's final offer here proposes wage increases of 3.8% followed by 3.1%, a two-year total of 6.9%. The Village argues that the difference in the year the health insurance change would become effective is even smaller, 4% for the Police in 2009 versus 3.8% for Local 1838 in 2008. The Village also argues that the 2009 implementation of the Police agreement on health insurance is logical simply because the parties did not open negotiations until about the end of September, 2008, and voluntarily settled a mere two weeks later. Finally, the Village argues that unlike the Union's

proposal, the Village's proposal fairly allocates health costs between family and single employees, while the Union's proposal is not only unusual but fails to take into account the higher costs associated with family coverage. The Village also reiterates its position that it is in the best interest and welfare of the public to support the principle that an employee who wants the more expensive health insurance plan should pay for the difference, also reiterating its claim that the Union's offer removes the incentive to reward the least costly provider.

### **The Union's Position**

The Union argues in favor of a comparability pool consisting of the City of Berlin, Village of Combined Locks, Village of Kimberly, City of Oshkosh, City of Neenah, Village of North Fond du Lac, City of Omro and City of Ripon. The Union contends that these are the appropriate comparables because of their location within contiguous counties and within 30 miles' radius of Winneconne, and because of similarities in population, land wealth, labor market and property taxes. Conceding that Winneconne is smaller than any of the asserted comparables, the Union notes that five of the nine municipalities have a population of less than 6,000, and seven of the nine have a population of less than 7,700. The Union justifies the inclusion of Neenah and Oshkosh because they share a common labor market with Winneconne, which serves as a bedroom community to these two cities, and because they are all in Winnebago County.

The Union argues that the one internal settlement should not be seen as a guide to this matter, and not merely because the duties and responsibilities of police officers are very different from those of other employees. The Union points to significant differences between the Police settlement and the Employer's offer here, noting that the health insurance provision is the same but came into effect for the Police in 2009, not 2008 as proposed for the DPW unit. Equally significant in the Union's view is the difference in the wage settlement, which for the Police was 2% January 1, 2008; 2% July 1, 2008; 4% January 1, 2009; and a third year not at issue in this matter, with a 3.5% wage increase effective January 1, 2010. The Union computes the wage increase over 2008-2009 at \$1.20 for this unit and \$1.92 for the Police unit, with an overall wage lift over these two years of 6.85% in the present unit compared to 8.24% in the Police unit. This sharp difference in the wage package, the Union argues, undermines any claim the Employer might have to comparability.

The Union argues that the external settlements also favor its offer. The Union costs the average increase of its proposed comparables over 2008-2009 at 6.56%, close to the agreed wage package here. For the same comparables, the Union estimates a range of 2008 employer contributions for health insurance between \$329.35 and \$680.43 for single plans and \$1021.64 to \$1705.48 for family plans. The Union costs its own final offer as generating employer contributions in 2008 of \$459.20 for single and \$1189.30 for family plans for those employees using Network Health, and \$507.80 for singles and \$1280.27 for family plans using United. The Employer's final offer, according to the Union, generates contributions of \$464.74 for both single plans and \$1158.34 for family plans. In 2009, the external single plans move up to a range of \$369.23 to \$730.16, with a range from \$921.85

to \$1824.76 for family plans. Under the Union's final offer, Employer contributions would be \$502.20 single / \$1319.30 family for Network, and \$540.10 / \$1414.00 for United. The Employer's final offer would result in contributions for either plan of \$519.84 single or \$1296.09 family. The Union argues that this represents a shift from Winneconne's currently average employer contributions to a below-average contribution, indicating that there is unnecessary cost-shifting from employer to employee.

The Union argues further that four of the nine municipalities it is using as comparables are also in the State Health Plan, and two of these maintain dollar caps, as the Union does in its final offer. The other two maintain a guaranteed employer contribution of up to 105% of the lowest cost qualified plan, while here, the Village seeks to contribute only up to 95%. The Union argues that there is no pattern of change from dollar caps to percentage-based contributions among the comparables.

The Union argues that the net effect of the Employer's proposal is an excessive increase in employee contributions, as well as a disparity between family versus single plans which was not there before. The Union argues that under established principles concerning proposals for major change in the status quo, the Employer should be required to show a compelling need, and that it has not done so, particularly because health insurance increases in Winneconne have been moderate. The Union finds single health insurance plan increases for both Network and United of 7.3% in 2007, 7.4% in 2008, and 11.9% in 2009. For family plans, the Union again finds both plans have identical increased percentages, at 9.4% in 2007, 10.2% in 2008, and 8.8% in 2009. The Union argues that this is far less than some other employers have had to endure. The Union also argues that shifting the costs to employees does not address the rising costs in any event. But the impact on employee contributions, the Union argues, is major. The Union costs the impact of the Employer's offer on employees taking single health insurance through Network as rising from \$15 in 2007, through \$24.46 in 2008, to \$27.36 in 2009, an 82.4% increase in the employee contribution over two years. For such employees taking the United plan, the asserted rise is from \$15 in 2007 to \$73.06 in 2008 and \$65.26 in 2009, a 335.1% increase. For family employees taking the Network plan, the increases are from \$15 in 2007 to \$60.96 in 2008 and \$68.21 in 2009, a 354.7% increase. And for family employees taking the United plan, the increases are from \$24.02 in 2007 to \$182.46 in 2008 and \$162.91 in 2009, a 578.2% increase. This compares to overall increases for the total premiums of the plans of between 19 and 20%. The Union's calculation that by 2009, employees enrolled in the family plan through United (the majority of the bargaining unit) will see an employee contribution increase totaling \$1,666.68 per year. This, the Union argues, dwarfs other figures and demonstrates the unreasonableness of the Employer's proposal.

As to other factors, the Union argues that the overall compensation factor does not favor the Employer's offer, because the Village has included comparables with wage rates substantially lower than Winneconne by going far afield to find them. The Union generally characterizes employees in this bargaining unit as having benefits well within the range of the Union's preferred comparables, except for sick leave payout, where Winneconne's is the lowest. The tentative agreements, meanwhile, operate in the Employer's interest, in the Union's view. Specifically, the Union argues that while the Village agreed to compensate Water/Wastewater Treatment employees at \$90 per week for on-call work, this reflects a



new agreement that such employees must rotate on-call status weekly, with an associated interference with their personal time. This is particularly true because while there were three employees affected by this change at the time the agreement was reached, one has since left employment with the Village and is not going to be replaced. The Union also agreed to a layoff/recall change which allows the Village to retain junior employees when the more senior employee is not qualified to perform the available work.

In its reply brief, the Union objects to the Employer's characterization of the Union's final offer as unreasonable partly because of the parity in dollar costs within a single and family plans, noting that this is the product of a mutual agreement between the parties of five years' duration. It is the Employer's proposal which is unreasonable, the Union argues, based on its calculation that the majority of employees will see a net increase in their out-of-pocket insurance costs of 578.2% from 2007 to 2009. This is not the sharing of health insurance cost increases, but the shifting of them, in the Union's view.

The "greatest weight" factor, the Union contends, should not apply here, because the Employer has presented no direct evidence of any levy limit that actually affects its ability to pay the cost of either proposal; similarly, the Union objects to the Employer's claim that the "greater weight" factor should be applied in its favor, because of its failure to produce any relevant evidence which speaks to local economic conditions in Winneconne, while the admittedly bad general economy is reflected in comparable settlements. With respect to the comparability pool, the Union argues that contrary to the Employer dismissing Oshkosh and Neenah as inappropriate because of their population size, they are actually the second and third closest municipalities to Winneconne of all proposed comparables of either party. The Union also points out that the Employer includes Winnebago County, which includes both Oshkosh and Neenah, in its discussion of comparability in its brief. Regardless of which comparable set is adopted, the Union notes, municipalities can be found in both which use the State Plan, yet none of these eight municipalities has language similar to what the Employer seeks to implement; all of the others either have dollar caps, contribute a percentage of all qualified health insurance plans, or contribute a percentage of up to 105% of the lowest cost qualified plan. Only Winneconne seeks to contribute at 95% of the lowest cost plan. The Union also argues that the Village mischaracterizes what employees are paying already, because contrary to the Employer's argument, employees using the more expensive United plan are already paying more out-of-pocket than those using the Network plan. And contrary to the Employer's claim that the Union is not willing to share in the increased cost of health insurance, the Union notes, its proposal provides for a tripling of employee contributions from 2007 to 2009. In the face of health cost increases which are far from the worst in the area, the Union argues, this is a significant increase, while the relatively moderate yearly percentage increases seen in Winneconne in the overall premium do not warrant a 578% increase in employee insurance costs.

## **Discussion**

The factual record compiled in this matter evidences some relatively unusual problems. The extreme disparity between the parties' proposed comparable pools, combined with the suggestion by each that the other has been cherry-picking among communities quite

dissimilar to Winneconne, has meant that some data are simply missing, since the parties did not focus on all the same criteria and neither party included data with respect to possible comparables beyond its own list. There are also some factual errors in the documents, which require that many of the comparisons and arguments made by both parties be viewed with a skeptical eye. First, however, comes one particularly unusual problem.

### ***The Disputed Status Quo***

Upon initial review of the briefs and exhibits, certain discrepancies within each party's presentation led to a request for clarification, which the parties have answered separately, after some delay during which the parties attempted to agree on a joint statement. In brief, each party had filed exhibits and arguments which internally contradicted themselves, in some places stating that the existing Employer insurance contribution was based on 95% of the lowest cost premium, and in other places stating that the existing Employer contribution was based on 105% of the lowest cost premium. The difference, of course, would affect almost every calculation made. Accordingly, I requested clarification.

In its October 2 letter of clarification, the Employer states that in 2003, the existing language was agreed upon, and that under it, employees electing United should have paid the difference between United's premium and Network's, plus \$15.00. The Employer states that in 2003, however, the Union objected to the Employer's interpretation, whereupon the Employer began paying premium contributions up to 105% of the lowest cost plan rate, minus \$15. The Employer concedes that it has done so ever since, for the AFSCME unit only, while contending that this was an error that persisted without the knowledge of either the Village Administrator or the Village Board, till very recently. The Union, in its October 5 letter of clarification, agrees as to the facts of the payment, but contends that it is disingenuous of the Village to claim that the Administrator and Board were unaware of the health insurance contribution practice, two contracts after it was implemented.

The Employer argues in its letter of clarification that the consequence of the difference in the parties' interpretations "may require that you also serve as a grievance arbitrator as you will be called upon to interpret contract language, intent as well as the improper application of contract language." The Union makes no reply to this statement. In the absence of an express stipulation of authority to decide a contract interpretation question, it is clear that I lack such authority. Furthermore, the issue did not arise till long after the hearing, which did not include any of the evidentiary questions such an issue might imply. Nevertheless, in calculating what the dollar and percentage increases are likely to represent under the competing final offers, a baseline must be established. I believe the appropriate baseline is what the Employer has actually been paying, because that is the amount which inevitably has been part of its budgetary calculations all along, regardless of whether it should have been paying that amount or some other amount. Accordingly, the calculations below will start from the stipulated fact that the Employer has, in practice, been paying 105% of the lowest cost premium, minus \$15, for employees electing the more expensive plan.

### ***"Greatest Weight" and "Greater Weight" Factors***

The Employer has made no showing of any actual budgetary impact as a result of revenue limits which would materially crimp its ability to fund either proposal here. The "greatest weight" factor, as many arbitrators have observed, is entitled to that status not on some generic basis, but on such a specific showing. Similarly, the Employer has made no factual

showing of any impact from the current downturn in the economy, bad as it is nationally and regionally, that would distinguish Winneconne from otherwise comparable municipalities. The “greater weight” criterion also requires such specificity, and therefore is not effectual here.

### ***Internal Comparability***

Internal comparability is also relatively straightforward, though a closer question. Numerous arbitrators have observed that one settlement does not constitute a “pattern” in the usual sense of that term. An allowance, however, must be made for the realities of small employers, such as Winneconne, which has only two bargaining units. If the Police settlement had been on identical terms to the Employer’s proposal here, that would be entitled to significant weight in favor of the Employer’s final offer. But it is not close to identical. Not only is the health insurance change to the 95% Employer contribution effectuated one year later than the Employer proposes here (a large dollar item to an employee taking the more expensive family plan), but it is accompanied by a significantly higher wage increase. I do not rely for this finding on the dollar difference in average wage increases, as calculated by the Union; police officers tend to have very different wage structures from DPW employees, so that comparison is less meaningful than a percentage increase comparison. But the Union is correct in calculating that over 2008 and 2009, the two years of the Police contract which are also at issue here, the Police wage settlement ends up about 1.4% more than the Employer’s offer here. I see nothing about the third year of the Police settlement which would explain this, since at 3.5% it is highly unlikely to fall short of general expectations for 2010, and may indeed exceed what many other unions are able to achieve. At the same time, while the Employer has argued that the Police unit was less competitive in its existing wages to its comparables than the DPW, there is insufficient evidence in the record to buttress this claim. The impression is left that for 2008 and 2009, the Employer simply put more money on the table, to obtain a later implementation of its health insurance proposal, than it was willing to do with the bargaining unit at issue here.

The effect of the health insurance contribution increases proposed by the Village, which the Union has calculated on a per employee basis, indicates that for the majority of the bargaining unit, the effect of the increases in employee contribution reduces the net spendable increase under both proposals, but under the Union’s these employees would still receive over 5% “net” over the two years, while under the Village’s proposal, these employees would “net” slightly over 2%. The effect of this is that on a total package basis, the comparison to the Police settlement is still less favorable to the Village, because the net spendable increase to an employee in that bargaining unit appears closer to the Union’s proposal in this bargaining unit.

Internal comparability must look at the entire contract. Although by itself, therefore, the Employer’s health insurance proposal is more comparable to the only other internal unit than the Union’s health insurance proposal, the effect of the relative wage increases is to undermine the reasonableness of the Employer’s proposal to a significant extent.

### ***External Comparability***

Because the parties have proposed such different comparability lists and have not measured the identical data, only limited measures of historical or comparative data are

available (for example, it is not possible based on this record to construct a table similar to that below for 2008.) I find most of each party's list to be only remotely comparable to Winneconne, essentially because most of the Union's list consists of communities that are much larger while most of the Employer's list consists of communities that are more than 40 miles away. That distance, for village employees, stretches the concept of "labor market" beyond what seems reasonable when there are enough communities, within the kinds of parameters which many arbitrators have accepted before, to make for a workable list. Table 1, which follows<sup>3</sup>, includes two communities proposed as comparables by both parties (Omro and Combined Locks) and four others which are within about 30 miles of Winneconne and within a range of about double to half the population size.

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<sup>3</sup> I rely primarily on Union's Exhibit 21 and Employer's Exhibits 6 and 20 for the calculations in the tables, with some reference to the underlying contracts in the record. The calculations assume that if the Union's proposal prevails, the contract language would continue to be interpreted as it has been since 2003. But the contract language itself is self-evidently unclear enough to have resulted in a dispute over how it should be interpreted. As previously discussed, I find that the existing actual payments, which have been stipulated by the parties, constitute the fairest way to make such calculations. But it bears emphasizing that I do not read anything in the parties' clarifications as constituting a stipulation to place the question of interpretation of the existing contract before me. Since I lack authority to decide such a question, the use of the "up to 105%" baseline here is not intended to constitute or imply a ruling to the effect that the 105% contribution level truly represented the parties' joint intent, and should not be read as such.

**Table 1**

Municipality	Population	Full Value (to nearest million)	Carrier/Plan	2009 Minimum Single / Family Premium	2009 Employer Contribution (maximum) S/F	2009 Minimum Employee Contribution S/F	Notes
Berlin	5343	222	Network Health	\$341.09 \$812.16	\$341.09 \$812.16	0	0
Combined Locks	2962	259	State Plan	\$547.20 \$1364.30	\$574.56 \$1432.52	\$54.72 \$136.44	employer pays 90% up to 105% of LCQ
Green Lake	1165	208	Network Health	\$547.20 \$1364.30	\$507.20 \$1294.30	\$40 \$70	employee contributions expressed as dollar figures
North Fond du Lac	4980	184	State Plan	\$547.20 \$1364.30	\$469.88 \$1170.75	\$45 \$75	employee pays figure shown plus amount over 105% of LCQ
Omro	3414	153	State Plan	\$547.20 \$1364.30	\$548.31 \$1380.02	\$25 \$50	employee pays figure shown plus amount over 105% of LCQ
Redgranite	2076	33	Unity Health	\$790.31 \$1778.20*	\$731.04 \$1644.84	\$59.27 \$133.37	employee contribution expressed as 7.5% S/F
Winneconne (Union)	2516	175	State Plan	\$547.20 \$1364.30	\$529.56 \$1387.52	\$45 \$45	assumes Employer would continue to pay up to 105% of LCQ, after employee contribution of \$45**
Winneconne (Employer)	“	“	“	\$547.20 \$1364.30	\$519.84 \$1296.09	\$27.36 \$68.22	employee pays all costs above 95% of LCQ

\* The figure above shown is denoted as the “double” premium. But the Union notes that no employee has opted for that coverage, so I rely on the “double” figure as opposed to the extraordinarily high “family” figure of \$2568.51.

\*\* See accompanying discussion as to the status quo.

**Table 2** examines the competing proposals' effects on employee out-of-pocket costs as well as employer contributions for the more expensive option (United Health) that the majority of Village employees are actually using:

Municipality	Carrier/Plan	2009 Minimum Single / Family Premium	2009 Maximum Employer Contribution S/F	2009 Employee Contribution S/F for United Health
Berlin	Network Health	\$341.09 \$812.16	\$341.09 \$812.16	N/A
Combined Locks	State Plan	\$547.20 \$1364.30	\$574.56 \$1432.52	\$58.51 \$145.90
Green Lake	Network Health	\$547.20 \$1364.30	\$507.20 \$1294.30	N/A
North Fond du Lac	State Plan	\$447.50 \$1115.00	\$469.88 \$1170.75	\$115.22 \$288.25
Omro	State Plan	\$547.20 \$1364.30	\$548.31 \$1380.02	\$36.79 \$78.98
Redgranite	Unity Health	\$790.31 \$1778.20*	\$731.04 \$1644.84	N/A
Winneconne (Union)	State Plan	\$547.20 \$1364.30	\$529.56 \$1387.52	\$55.54; \$71.49
Winneconne (Employer)	"	\$547.20 \$1364.30	\$519.84 \$1296.09	\$65.26 \$162.91

**Table 3** addresses the cost effects of the competing proposals in Winneconne specifically:

	Total Premium, Network S/F	Total Premium, United S/F	Village contribution, Network/United S/F	Asserted Basis	Employee contribution, Network S/F	Employee contribution, United S/F
Winneconne 2007 actual	\$455.70; \$1135.50	\$488.00; \$1216.30	Network: \$440.70 \$1120.50 United: \$463.48 \$1177.27	Employee paid \$15. Then Village paid up to 105% of lowest cost premium. Employee paid remainder	\$15 / \$15	\$47.30 / \$39.03
Winneconne 2008 (Union)	\$489.20; \$1219.30	\$537.80; \$1340.80	Network: \$459.20 \$1189.30 United: \$483.66 \$1250.26	Employee pays \$30. Village then pays up to 105% of lowest cost premium. Employee pays remainder	\$30 / \$30	\$54.14 / \$90.54
Winneconne 2008 (Employer)	"	"	Network or United: \$464.74 \$1158.33	Village pays 95% of lowest cost premium	\$24.46 / \$60.97	\$73.06 / \$182.47
Winneconne 2009 (Union)	\$547.20; \$1364.30	\$585.10; \$1459.00	Network: \$502.20 \$1319.30 United: \$529.56 \$1387.51	Employee pays \$45. Village then pays up to 105% of lowest cost premium.	\$45 / \$45	\$55.54 / \$71.49

				Employee pays remainder		
Winneconne 2009 (Employer)	“	“	Network or United: \$519.84; \$1296.08	Village pays 95% of lowest cost premium	\$27.36 / \$68.21	\$65.26 / \$162.91



Table 1 demonstrates that out of six municipalities found comparable to Winneconne, three have the State Plan. Two of these have the same options as Winneconne and the same premiums, and it appears from the documents in the record that employees in these communities have made largely the same choices as those in Winneconne – i.e., out of a longer list of choices, Network Health and United account for all or virtually all of the employees' selections.<sup>4</sup> A third community, Green Lake, appears not to be part of the State Plan, but has identical premiums from Network Health. Meanwhile, the other two communities in the list, Berlin and Redgranite, respectively have the least expensive and the most expensive plans, by a considerable margin. In short, among comparable communities, Winneconne is essentially at the center of the pack in premiums.

A cross-section of all relevant numbers for all six municipalities is not in the record prior to 2009. But as of the second year of the contract, it appears that two communities have minimum required employee contributions that are on average lower than Winneconne's would be under either the Union's or the Employer's proposal; two are about the same; and two are significantly higher. The real difference occurs when employees pick something other than the least expensive plan, as a distinct majority have done in Winneconne. Under that circumstance (see Table 2), one comparable community which also has the State Plan has employee premium contributions roughly similar to those required under the Union's proposal here, another has contributions roughly similar to the Employer's proposal, and a third (which however has other options not available in Winneconne) imposes a much higher charge to employees who want United Health than either proposal here would require. On a strict basis of comparability, therefore, neither proposal appears particularly unreasonable.

Next comes the question of the percentage versus flat dollar caps as the basis of the employee contribution to health insurance costs. The awards quoted by the Employer as favoring a shift to a percentage basis are logical in the context of a union that has been dragging its feet as to any recognition that it has a shared responsibility for controlling increased costs. But here, the Union has offered to triple the employee contribution over two years (though from a low base.) While the Union's proposed equal dollar single/family employee contribution is unusual, it represents the product of previous negotiations, so I do not weigh that structure in and of itself significantly against the reasonableness of the Union's proposal.

Among the comparables, three have fixed employee minimum dollar contributions, which however are on average higher than the Union's proposed level; two have percentage employee contributions (and greater ones than the Employer here is seeking) and one, with an exceptionally low premium, has all of it paid by the employer. And while the Union describes the health insurance cost increases in Winneconne as "moderate", that term is apt

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<sup>4</sup> North Fond du Lac is in a slightly different State Plan market area, and has additional choices, some of which are less expensive. This affects the cost to employees of what become the more expensive options, such as United Health.

only in terms of other employers' related experiences, not in terms of labor costs in general. Together with the implication from the above tables that on average, more employees of the comparables are paying contributions by 2009 that are more similar to the Village's offer, if they elect the more expensive plan, this puts external comparability overall (balancing its several internal factors together) slightly in favor of the Village's final offer.

That leaves two other factors for which there is some evidence in the record: the level of change represented by the Employer's proposal and whether it is justified, and the overall level of compensation. It is widely accepted in arbitration that when a party seeks a significant change in the status quo, it must typically meet a classic three-pronged test: a need for the change, a demonstration that the change is likely to have the needed effect, and a suitable quid pro quo are all typically required. The exceptions, including for health insurance, where many arbitrators have determined that a quid pro quo is not always required when an employer is seeking an otherwise reasonable way out from abnormally high costs, do not appear to apply here, in a situation where the Village has similar costs to most of its peers, within the admittedly high rate of increase in health costs in general. If most employees were signed up with the less expensive plan, the Employer's proposal would have relatively little effect on them, and the agreed-upon wage increases might demonstrate enough of a quid pro quo, since they appear slightly larger than the average of the comparables (see Table 4 below.) But three-quarters of the employees here are signed up with the more expensive plan, and almost all of those have the family plan. For the bulk of the bargaining unit, the Employer's proposal therefore represents an immediate quadrupling of an employee's out-of-pocket contribution, amounting to almost \$1500 additional in the second year, and even more in the first year. This is a lot for an employee to absorb all at once.

Overall compensation is primarily influenced by wages, of course. In Winneconne, using the top Laborer rate as typical, Table 4 shows that the Village ranks third out of six comparables<sup>5</sup>, but the top four are far ahead of the other two. In terms of wage increases, the agreed 3.8%/3.1% package over two years is at the top for the first year and average for the second year, making it a highly competitive package over the two years. A general review of other benefits (sick leave accumulation, vacation, holidays, dental, sick leave payout, etc.) reveals nothing so remarkable about Winneconne as to establish it as either leading or trailing overall. And I do not weigh the new on-call compensation (paid for continuous availability) in the water/wastewater plant in this measurement, since it accompanies a work requirement that was also apparently not present before and there is no adequate way on this record to compare it against other municipalities.

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<sup>5</sup> It is not possible to determine this or other specific job rates for North Fond du Lac based on the contract in the record.

**Table 4**

Municipality	Top Laborer Rate, end 2008	2008 increase	2009 increase
Berlin	19.01	3% 1/1 plus \$.15 7/1	3% 1/1 + \$.20 7/1
Combined Locks	19.84	3%	2.5% 1/1 + 1.5% 7/1
Green Lake	13.89	3%	3%
North Fond du Lac	see note	3%	3%
Omro	19.28	3.2%	3.1%
Redgranite	17.08	3%	3%
Winneconne	19.17	3.8%	3.1%

**Summary**

The “greatest weight” and “greater weight” factors do not bear on this proceeding, because there is no specific evidence of a difference between Winneconne and the comparables in terms of economic conditions, and no specific evidence of impact in Winneconne from revenue limitations. The lawful authority of the employer is not challenged by either final offer, nor is the Village’s financial ability. The interests and welfare of the public generally favor greater economy in health insurance in the present era, but the expense of the current health insurance package is not extreme and the Union has offered some greater contribution by employees, reducing the impact of this factor, though it remains in the Village’s favor. External comparability is a relatively close question, all things taken together, but slightly favors the Employer’s offer. Private-sector comparability was not argued, and the CPI does not operate materially in favor of either proposal, because the wage agreement is somewhat higher than the CPI while the net effect of the Employer’s health insurance proposal on a typical employee’s take-home earnings would reduce those sharply.

Overall compensation, internal comparability and “other factors”, as traditionally interpreted, however, generally favor the Union’s proposal. While the slightly higher than (externally) average two-year wage increase can be interpreted as more than is justifiable based on the increase in employee health insurance contributions in the Union’s proposal, it is not large enough to serve as a quid pro quo in an internal comparison, in the face of the larger amount the Employer was willing to pay the Police bargaining unit to get a later implementation of the same language.

Finally, some discussion is due of a potential “change to the foregoing circumstances” — an unusual variety, in that, during the course of this proceeding, the parties discovered that there has been mutual confusion for six years about the existing terms of the very item they dispute for the future. If the discovery had been that the Employer was in fact contributing to health insurance based purely on the lowest cost plan, and not on the 105%-of-lowest-cost-qualified-plan level, that would have affected all of the calculations above, perhaps materially. But in the event, although the Employer contends it was doing so in error, the stipulated fact is that the status quo is that contributions were being calculated based on 105% of the lowest cost plan. I therefore conclude that regardless of how a grievance arbitrator might have interpreted this language (no doubt, based on a hearing and a record much different from what is before me) it is not appropriate to conclude that there has been any relevant and effectual change to date.

In a close case, in which both parties have demonstrated some confusion as to the status quo, and in which both have proposed fairly reasonable packages, I accordingly conclude that the disparity between what the Village has been willing to pay to obtain its health-insurance language with the only other internal bargaining unit and what it is willing to pay as percentage wage increases here tips the balance.

#### **AWARD**

That the final offer of the Union shall be included in the 2008-2009 collective bargaining agreement.

Dated at Madison, Wisconsin this 9<sup>th</sup> day of October, 2009

By \_\_\_\_\_  
Christopher Honeyman, Arbitrator