STATE OF WISCONSIN
BEFORE THE ARBITRATOR

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In the matter of the petition of

MILWAUKEE DISTRICT COUNCIL 48, AFSCME, AFL-CIO and its affiliated LOCAL UNION 609

To initiate Interest Arbitration between said Petitioner and

THE VILLAGE OF GREENDALE

Daniel Nielsen, Arbitrator
Decision No. 25579-A
Date of Appointment: 08/11/88
Date of Hearing: 11/07/88
Record Closed: 01/14/89
Date of Award: 03/14/89

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Appearances:

Podell, Ugent & Cross, S.C., 207 East Michigan Street, Suite 315, Milwaukee, WI 53202 by **Ms. Nola J. Hitchcock Cross**, appearing on behalf of Council 48 and Local 609.

Lindner & Honzik, S.C. 411 East Wisconsin Avenue, 10th Floor, Milwaukee, WI 53202 by **Mr. Roger E. Walsh**, appearing on behalf of the Village of Greendale.

ARBITRATION AWARD

Local 609 (hereinafter referred to as the Union) and the Village of Greendale (hereinafter referred to as the Village or the Employer) were parties to a collective bargaining agreement setting out wages, hours and working conditions for employees in a collective bargaining unit consisting of Mechanics, Serviceman #1, #2, #3, Switchboard Operator and Health Clerk, Grader Equipment Operator, Water Plant Operators, Landscaper, Water and Sewer Clerk, Assistant Mechanic, and Clerk Typist. The agreement expired on December 31, 1987, and the parties met three times for the purpose of negotiations. Subsequently, the parties met three times for the purpose of mediation with an investigator from the Wisconsin Employment Relations Commission. The parties remained at impasse with respect to Health Insurance Premium Contribution, the identity of HMO's, Health Insurance Contribution for Retired Employees, Management Rights, Subcontracting and Fair Share.

The undersigned was selected from a panel of arbitrators provided by the Wisconsin Employment Relations Commission. A hearing was held on November 7, 1988 at Greendale, Wisconsin, at which time the parties were given full opportunity to present such testimony, exhibits, and other evidence as they believed relevant to the dispute. The parties submitted briefs and reply briefs, the last of which were exchanged through the undersigned on January 14, 1989, whereupon the record was closed.

Now, having considered the evidence, the arguments of the parties, the statutory criteria, and the record as a whole, the undersigned makes the following Award.

I. Final Offers

The Final Offers of the parties are appended hereto as Appendix "A" (Union Offer) and Appendix "B" (Village Offer), and are incorporated by reference. The essential differences are as follow:

A. Health Insurance - The Union's Final Offer would set the Village contribution at a maximum of $104.23 per month for single coverage and $274.01 per month for family coverage. This is the equivalent of the WPS rates for the contract year. The Village proposes to pay $92.62 for single coverage and $238.00 per month for family coverage. This is equivalent to the most costly HMO offered by the Village. Additionally, the Village proposes a side letter to provide full payment of the premium for the one employee remaining in the WPS plan at the time the offers were made. Both parties propose to amend the dollar figures to reflect any increases for 1989.

B. The Specification of HMO's - The Union proposes to remove the contract language specifically allowing for change of carriers, and to insert language specifying that the Village will offer Family Health Plan, Samaritan Health Plan, Compcare, Prime Care Health Plan, and Wisconsin Health Organization as HMO options to the employees. The Village would continue to reserve the right to change carriers, and not specify the HMO's.

C. Retiree Health Insurance Coverage The parties have agreed to add a health insurance contribution for retirees. The issue is whether, as proposed by the Union, the employer will pay 75% of the total premium cost, or, as proposed by the Village, the contribution will be capped at 75% of the premium amount at the time of the employee's retirement.

D. **Management Rights** - The parties have both proposed inclusion, for the first time, of a management rights clause. There are substantial differences in the format of the clauses.

E. **Subcontracting Work** - The Union proposes to limit the right to subcontract by specifying that it will not be used for the purpose of discriminating against the union, and that no subcontracting of work will result in the layoff of any non-probationary employee. The Village proposes to maintain the current language, which limits subcontracting by requiring that a subcontract not result in the layoff or reduction of any unit employee employed as of January 1, 1977.

F. **Fair Share** - The Union proposes to delete the provision in the current memorandum of understanding between the parties, requiring termination of fair share coverage for clerical employees and reopening of the fair share provision for clerical employees in the event that a request is made for recognition and bargaining rights with respect to any clerical employee not specified by the Recognition Clause. The Final Offer of the Village would continue the effect of this provision.

II. Statutory Criteria

This dispute is governed by the terms of Section 111.70(4)(cm)7, Stats., the Municipal Employment Relations Act ("MERA"):

> "(7) Factors considered. In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall give weight to the following factors:
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> a. The lawful authority of the municipal employer.
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> b. Stipulations of the parties.
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> 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.
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> 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 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 the same community and in comparable communities.

f. 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 in private employment in the same community and in comparable communities.

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

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

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

III. The Positions of the Parties

A. The Initial Brief of the Union - The Union takes the position that its offer is the more reasonable, and should be accepted. The Union's position is premised upon the fact that the comparables clearly favor its offer in every respect, and the fact that the Village offer is so plainly flawed.

Initially, the Union asserts that the Village's offer is unreasonable under the "lawful authority", "interests of the public" and "traditional factors" criteria, because it contains an arguably illegal provision. The Village's offer would continue a Memorandum of Understanding allowing for the suspension of fair share payments by clerical employees in the event of a representational effort by the Union on behalf of any currently unrepresented clerical

employee. During the term of the expired contract, this clause has been used to punish the Union for seeking to represent an employee who requested inclusion in the bargaining unit, and fair share and dues deduction have, in fact, been suspended. This punitive provision has the effect of interfering with the right of such employees to exercise their right to seek representation, as well as interfering with a labor organization, discriminating on the basis of union activity and promoting undue fragmentation of bargaining units. These effects are contrary to MERA, and frustrate the policy of promoting stable labor relations. Any Award containing such a provision would, the Union asserts, be unenforceable.

Turning to the issue of Management Rights, the Union asserts that it has responded fully to the Village's desire for a specification of the rights of management and that the Village has given no reason, either in the hearing or during bargaining, for insisting upon the particular formulation in its offer. The Union notes that there are potential conflicts between the Village's proposal on management rights and the remainder of the collective bargaining agreement. In particular, the Union expresses concerns over the "right to determine the competence and qualifications of employees" and the "right to create new positions" as they relate to seniority rights under the agreement. The language proposed by the Union has been tested in a comparable jurisdiction and found to work well. Given the lack of any justification on the part of the Village, the Union's formulation of management rights should be preferred.

The specification of HMO's, the Union contends, is a reasonable and necessary step to preserve the status quo. The HMO's named by the Union have already been agreed upon by the parties. The inclusion of a specific listing merely assures employees of stability in the identity of their health care provider. This is necessary where, as here, the employees have already been forced from their initial primary care providers by the Village's refusal to pay premium increases during the bargaining hiatus.

The Village's proposal to cap health insurance premium contributions, the Union contends, is a change in the status quo ante, which must be justified by the Village. The Village has not even asserted a need for a change in this area, and none is necessary. The premiums paid by the Village have shown a net decrease over the past several years, and remain lower than only a few years ago. Allowing the cap proposed by the Village will decrease the net increase of bargaining unit employees to 1%, as compared to an increase in the cost of living of 4.1% during the period preceding the effective date of the agreement. Given the fact that no need has been shown, and no ability to

pay question raised, the Village's position is clearly unreasonable, and the status quo position of the Union should be preferred.

Again, the Union stresses that no question of inability to pay has been raised by the Village. Yet the Village would require retirees, living on fixed incomes, to bear the burden of any increase in health insurance costs after the date of retirement. External comparables plainly support the Union's view that these increases should be shared by the parties. To the extent that internal comparables may support the Village's position, the Union urges that the other benefits enjoyed by members of those bargaining units should be considered as offsetting the retirement benefit.

For all of the foregoing reasons, the Union asserts that its offer is plainly the more reasonable under the statutory criteria, and should be accepted.

B. The Initial Brief of the Village - The Village takes the position that its final offer is the more reasonable and should be adopted in this proceeding.

Addressing first the issue of health insurance premium contributions, the Village notes that its offer would fully pay for any HMO coverage desired by unit employees. This will allow for full payment of premiums for 27 of the 28 unit members. The lone employe covered by WPS is the subject of a side letter of agreement contained in the Village offer, and would also receive full payment of premiums during the term of the contract. This position, the Village asserts, is consistent with the internal comparables, since two of the other three bargaining units contain identical provisions. The third contract, that of the firefighters, does not contain a specific dollar figure for coverage, but provides for full payment of HMO's, and employee payment of more expensive coverage. Thus the internal comparables provide, in practical effect, uniform support for the employer's proposal.

The Village points to the prior Award on this issue, by Arbitrator Fleischli. In particular, the Village draws the arbitrator's attention to Arbitrator Fleischli's comments on the steps that the Village should have taken to make its proposal more reasonable, including a grandfathering of employees who, for personal reasons, were effectively precluded from switching from WPS to an HMO. Arbitrator Fleischli also noted that only one other area community had tied its liability for insurance premiums to the cost of HMO coverage. The Village asserts that the practice has become far more widespread since the Fleischli Award, with four other area communities using HMO's as the benchmark for premium costs, and that its offer grandfathers the lone employee having WPS coverage. Thus the concerns of the previous arbitrator

have been met, and his "narrow margin" of preference for the Union position in the prior case should be overturned in this case.

The Union seeks to change the status quo by specifying which HMO's will be offered to Village employees, and by eliminating the current right of the Village to select carriers. The Union bears the burden of justifying this change, and has made no attempt to do so. Thus, this provision should weigh against the Union, and in favor of the Village, in this proceeding. The Village notes that the Union's offer would require the Village to offer five HMO's, which is more than any other municipality is obligated to offer. The external comparables offer no support for the Union offer, and no other Village contract requires any specific HMO. Neither reason nor comparability support the Union's demand to change the status quo.

The Union's proposal on payment of retiree health insurance has two important effects, the Village argues. First, it eliminates the existing opportunity for retired employees not meeting the "10 years of service/retirement under WRS or under disability" requirement for Village contributions to remain covered by the group health insurance at their own cost. This denies a valuable benefit to employees, and is totally unjustified.

The second element of the Union proposal for retiree premium payment is a dramatic increase in the costs to the Village. The Village asserts that the Union's proposal for retiree coverage will cost approximately 31% of what the Village pays for these employees while they are in active service. The internal comparables support the more modest proposal of the Village, with only the firefighters contract supporting the Union offer. A review of area municipalities shows a mixed practice, with the majority paying less than the Village offer of 75% of the amount at retirement. The Village stresses that this is a new benefit for this unit, and asserts that the "Cadillac" plan of the Union is not appropriate for a new benefit.

The management rights dispute is, the Village argues, an argument over form rather than substance. Neither proposal contains any unique provision. The Village notes that its proposal is identical to that contained in the Dispatchers contract, and is very similar to the language of the Firefighters contract. Thus, the final offer of the Village should be preferred as being more consistent with internal Village standards.

Turning to the issue of the Memorandum of Understanding, the Village notes the argument of the Union that the fair share limitation is illegal, and rejects the contention. The Village and the Union voluntarily included this provision in the contract in 1977 in response to the Village's concern that a large

number of clerical workers could be added to the bargaining unit and forced to pay fair share against their will. This provision has been voluntarily continued in six agreements since it was originally negotiated, and the Union has not offered any justification for removing it.

The second issue in the Memorandum of Understanding is the Union's proposal to greatly limit the Village's right to subcontract. The current provision protects employees on the payroll as of January 1, 1977 from any layoff due to subcontracting. The Union proposes to extend this guarantee to all employees. No justification has been offered for this proposal, the Village claims, and none can be. There is no evidence that a layoff is contemplated. The internal comparable uniformly give the employer an unrestricted right to layoff. The external comparables are mixed on this issue, but cannot be said to offer any significant support for the Union's offer. The Village maintains that the Union proposal to change the status quo is unsupported by persuasive evidence and should be rejected.

For all of the foregoing reasons, the Village urges adoption of its final offer as the more reasonable under the statute.

C. **Reply Brief of the Union** - The Union takes strong issue with the Village's attempt to use a "hodge-podge" of municipalities as comparables for Greendale. The Union has cited only those municipalities lying south of the City of Milwaukee. The employer has cited cities and villages North and West of the City of Milwaukee, within and without Milwaukee County. There is no rational reason to look to such municipalities for any guidance in this proceeding.

The Union urges that the dispute be seen in its actual setting. The struggle here is over the Village's desire for raw power in its relationship with employees -- power to force employees into different health plans, power to extend management rights, power to control the unit clarification process. Throughout negotiations, the Village refused to justify its position on the issues, relying instead on the threat of arbitration to attempt to force agreement. This is consistent with the very poor labor relations that have characterized the Village in the past. The arbitrator should reject this effort to supplant bargaining with arbitration, the Union urges, and accept the Union offer as a more likely road to stable and peaceful labor relations.

D. **The Reply Brief of the Village** - In response to the Union's arguments, the Village vigorously disputes the claim of illegality in the fair share clause. The Village notes that the Union never raised the issue of this language's acceptability through a declaratory ruling, and has never filed

any prohibited practice charges over the implementation of the language during the term of the last contract. It would be improper, the Village asserts, for the Arbitrator to make an initial determination of the legality of the disputed provision.

The Village notes that the fair share agreement is not imposed by law. It is a matter of voluntary agreement between the parties, and the parties may place whatever reasonable restrictions they wish on the language, including provisions for its expiration. Even if this provision were illegal, the Village asserts that there would be no impact on the stability of labor relations, since the contract's Savings Clause would preserve the remainder of the agreement.

On the issue of Management Rights, the Village expresses doubt as to the Union's qualifications to speak authoritatively on the subject. With respect to the expressed concern of the Union that there might be conflict between the Management Rights Clause and either Seniority provisions or other employee rights within the contract, the Village notes the inclusion, in both parties' proposals, of language reconciling the specified rights with the other terms of the contract. Thus no conflict need be created by adoption of the Village offer

The Village disputes the Union's contention that employees have been forced from WPS and into other carriers by the Village. The parties voluntarily agreed to a dollar cap on contributions in their last collective bargaining agreement. To the extent that employees might have switched because of cost during the hiatus, it is the result of voluntary agreement. The Village notes, however, that the record is totally devoid of any evidence to support this contention, or the claim that the Village's offer will decrease the employees' net to only 1%. The Union's claim is premised upon WPS rates. Only one employee is enrolled in WPS, and that employee is protected by eh Village's proposed side letter of agreement. All other employees will receive fully paid health insurance.

Finally, the Village argues that the Union's claim that "none of the external comparables require retirees ... to absorb increases in health insurance premiums.." is inaccurate. The Union's own exhibits refute this statement, and the record evidence shows a widespread practice of retiree payment for cost increases.

IV. Discussion

A. Management Rights - At the outset, the undersigned would note the limitations of the record and the argument on the issue of management rights. No single point in either proposal has been put forward to justify one offer over the other, and no problem of substance has been identified in either offer to mark the proposal as unreasonable. As in the recent Police Department interest arbitration[1], the areas of dispute appear to be primarily matters of form. The Union's concern over possible conflicts between the Management Rights clause and other provisions of the agreement ignores the fact that both offers contemplate the abridgement, delegation or modification of management's rights by the other terms of the agreement. The general terms of the Management Rights Clause will not normally be interpreted as superceding the more specific rights set forth in the remainder of the agreement, and the undersigned does not interpret the proposal of either party as intending such a result.

Neither offer is preferred on the issue of Management Rights.

B. Fair Share - The central dispute on the issue of fair share is whether the Village's proposal to continue the language allowing suspension of fair share and dues deduction on the basis of a demand for recognition is an illegal proposal, beyond the authority of the arbitrator to grant in a statutory proceeding such as this. Related to this issue is the question of whether interest arbitration is the appropriate forum for such a question or, as suggested by the Village, such issues are beyond the jurisdiction of the arbitrator.

On this latter point, it is clear that at least some questions of legality are appropriate for consideration by an interest arbitrator. The first of the statutory criteria under Section 111.70(4)(cm)7 is:

"a. The lawful authority of the municipal employer."

This has generally been interpreted as going to the authority of the employer to levy taxes necessary to implement an offer when levy limits are in effect, but that limitation is not express and the criterion certainly is capable of sustaining a broader interpretation. The mere fact that the arbitrator is able to consider the employer's lawful authority, however, does

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[1] Village of Greendale (Police Department), MED/ARB-4067, (Petrie, 11/3/87)

not inevitably lead to the conclusion that the arbitrator is the appropriate agent for determining the scope of that authority.

Where the legality of a particular offer is plain on its face[2], or can be calculated with some certainty[3], the arbitrator may proceed on the basis of that evident legality or illegality. Where the issue involves a initial determination of legality or illegality on an arguable point of prohibited practices under MERA, as is the case here, the more appropriate forum for such determination is the WERC. The declaratory ruling process is specifically intended to resolve such questions arising during the bargaining process, and the agency has an expertise in interpreting MERA's provisions which an individual arbitrator cannot claim. There is no reason to believe that the agency or the courts would show any deference to the determination of an arbitrator on the question of legality, raising the spectre of an Award which is premised on the arbitrator's personal but mistaken view of the law's meaning. While, in this case, there are policy concerns raised in tandem with the questions of legality, it is easy to imagine cases where the argument over legality is more technical, and unrelated to the merits of an offer. The assertion by the arbitrator of broad authority to determine such an issue could well result in an Award whose outcome is at odds with the statutory criteria outside of criterion "a". For this reason, the undersigned concludes that an interest arbitration is not the appropriate forum for litigating arguable questions of illegality under MERA.

While the issue of legality is not expressly considered, the issues of policy attendant to the fair share provision may still be weighed under criteria "c - interests and welfare of the public" and "j - other traditional factors". The issue of policy goes to whether the provision is consistent or inconsistent with the public interest as expressed in MERA, while the question of legality goes to whether it is so inconsistent as to be unlawful.

As noted by the Union, the provision would appear to discourage, although not prevent, the exercise of representational rights among the unrepresented clericals, at least insofar as they desire to be represented by Local 609. As a practical matter, the Local could be expected to feel somewhat constrained in seeking to represent employees by the loss of its fair share and dues deduction rights. While the Local is not the only vehicle for representation,

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[2] For example, a proposal to maintain separate seniority lists on the basis of gender or race.

[3] As with levy limit concerns, for example.

the Union is correct in noting that the introduction of another bargaining agent would likely result in fragmentation of bargaining units within the work force. Both effects of the language would appear to conflict with the public policy expressed in Section 111.70.[4]

While the Village asserts that provision is intended to prevent a large number of clerical employees from being involuntarily subject to fair share, the undersigned would note that this possibility is addressed in Section 111.70(2), which provides for a referendum upon petition of 30% of the unit to determine whether fair share should be continued. Even with this safeguard in place, it is possible for a substantial number of employees to be submerged in an overall unit and have the fair share provision imposed upon them by the majority. That possibility has apparently been weighed by the legislature in arriving at a referendum procedure requiring majority rule, and such an outcome, while perhaps unfair in the perception of the minority, cannot be termed inconsistent with public policy.

It is not clear from the record what trade-offs, if any were made in arriving at the fair share and dues deduction arrangement in issue here. It may be that the limitation was a critical quid pro quo for the entire clause, in much the same manner as many grandfathering arrangements are arrived at. In the absence of such evidence, however, the undersigned concludes that the fair share provision as proposed by the Village is less consistent with public interests as expressed in MERA than is the proposal of the Union to delete the language. Accordingly, the Union has met its burden of proof on this point and the final offer of the Union is found to be more reasonable on this issue.

C. **Subcontracting** - The Union seeks in this area to change the status quo ante by widening the restrictions on subcontracting, prohibiting the layoff of any non-probationary employee by reason of subcontract. The Village would retain the current language, insulating only employees in the work force as of January 1, 1977. The Union bases its proposal on what it views to be a strong pattern among the external comparables. The Village points to uniform internal comparables, what it believes are mixed external comparables, and the failure of the Union to demonstrate any need for the change. The Union, in turn, challenges the external comparables chosen by

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[4] Section 111.70(2) speaks to the right of employees to "form, join and assist labor organizations [and] .. bargain collectively through representatives of their own choosing." Section 111.70 (4)(d)2. a directs that the commission . "shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with size of the total municipal work force "

the Village, and urges that only Milwaukee County communities south of the City of Milwaukee be utilized.

On the question of which external comparables might be appropriate, the undersigned would note the change in Section 111.70(4)(cm)7"d" effected by the 1985 amendments, by which the legislature removed the words "in the same community and in comparable communities" for comparisons with public employees performing similar services. This phrase remains in the statute for the other two comparison criteria. Thus, in breaking out the three comparability criteria, the legislature appears to have drawn a distinction between the scope of appropriate comparisons, depending upon whether the comparison is drawn between similar employees, or public sector and private sector employees generally. In the former instance, the requirement of a "comparable" community has been removed.[5]

As a practical matter, the comparability of a community from which data is drawn will still weigh in the consideration of criterion "d", much as it always has where advocates and arbitrators have spoken in terms of "primary", "secondary" and "general" comparables. The most persuasive evidence under this criterion will remain those communities which the parties have traditionally relied upon in bargaining. The expansion of the comparability language will, however, allow the consideration of communities beyond that traditional grouping, with a weight consistent with the degree to which those communities might reasonably be expected to guide the parties because of similarities in location, population, size, services, tax base, and other standard indicia of comparability.

The record does not give any clear indication of a traditional comparability grouping for this unit. The prior Award by Arbitrator Fleischli speaks of a conflict in the comparables proposed by the parties, with the Union apparently putting forth the same set, and the Village attempting to expand the grouping. No explicit decision was made on the issue, although Arbitrator Fleischli did note questions surrounding the Village's comparables and based at least part of his analysis on the Union's set of southern municipalities.[6] Other than the bare assertions of counsel that all of the communities proposed are comparable, there is no statistical basis in the record for making any judgment as to the relative weights to be accorded the proposed

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[5] See discussion of this issue in Port Washington-Saukville Schools, Dec. No. 25016-B (9/19/88) at pages 18-20.

[6] Village of Greendale, Dec. No. 21509-A (Fleischli, 12/10/84) at page 11

comparables. As the Union's proposed comparables have at least geographic proximity to Greendale, and have been relied on, at least in part, in past arbitrations, the undersigned will accord them somewhat greater weight than the more scattered communities cited by the Village.

The external comparables, while mixed, favor the Union's position on the subcontracting issue. Eight of the nine communities cited by the Union restrict subcontracting which might result in layoffs, albeit using different and, in some cases, less restrictive formulations than that proposed by the Union. The Village's proposed comparables tip the balance back toward a less restrictive form of limitation, but do not overcome the Union's strong support in the primary comparables grouping.

The internal comparables, on the other hand, uniformly favor the Village's desire to have freedom to act in the area of subcontracting. Aside from this unit, none of the Village units enjoy layoff protection from subcontracting.

There is some difficulty in relying upon comparables for language such as is in issue here. While economic benefits can be expected to show a pattern within a particular labor market, the language of a collective bargaining agreement is more often a response to specific needs and concerns of the parties. The comparables show that the Union's proposal is not unreasonable in the sense of being unique, but they do not speak to the need for change in the voluntarily arrived at system set forth in the Memorandum of Understanding. Unlike the fair share issue discussed above, there is no broad public policy which can be cited as justification for the proposed change in the status quo on subcontracting. Given the split in the comparability criteria, and the absence of any proof that the change is for some reason needed, the undersigned finds that the Union has failed to carry its burden of proof, and that the final offer of the Village is more reasonable.

D. Health Insurance for Retirees - Both parties propose to add this new benefit. Two issues exist. The first is the Union's elimination of the existing right of retirees to participate at their own cost in the group insurance if they do not qualify for Village contribution. The second is how the Village's contribution will be measured.

The Union makes no argument concerning the first issue, and it may be that the elimination of this pre-existing benefit was unintended. The elimination of a benefit under the guise of expanding another is certainly not unheard of in labor relations, but that will not suffice to make it a reasonable action, absent some explanation of the purpose of the elimination. This aspect of the retiree health insurance proposal favors the final offer of the Village.

On the question of employer contribution, the Village seeks to cap its contribution at 75% of the premium at the time of retirement. Four of the Union's nine comparables on this issue offer a plan more generous than that offered by the Village. Two offer no plan, one pays 50% of the amount at retirement, and two others pay a variable percentage of the premium cost each month. Contrary to the Union's claim that the primary comparables uniformly support its offer, this results in a relatively even split among the primary comparables. The broader comparability grouping of 22 municipalities urged by the Village shows 45% of area municipalities providing no benefit, and only 18% providing a benefit as generous as that sought by the Union. The external comparables slightly favor the Village's proposal on this issue.

A review of the internal comparables shows that the Firefighters receive the benefit that the Union is seeking, while the Clerk-dispatchers' unit has no health insurance benefit for retirees and the unrepresented employees receive the benefit proposed by the Village. With respect to the Police unit, there is a conflict int he evidence. The language of the Police contract would appear to provide a payment of 75% of the current premium. The Village produced evidence to show that the practice is to pay based upon a percentage of the premium at the time of retirement. While the Union disputed the legitimacy of this practice, no evidence was adduced at hearing which established that the benefit in the Police unit was not, in fact, limited to the premium amount at retirement. The internal comparables favor the position of the Village.

While neither party's position receive overwhelming support from the comparables, the Village's more modest proposal for funding this new benefit appears to be well within the range of reasonableness, and receives greater support from the comparables than does the Union's. In combination with the fact that the Union's offer would work an unjustified denial of a benefit to those workers who retire without qualifying for Village contributions, this yields the conclusion that the Village's offer is the more reasonable under the statute.

E. Specification of HMO's - The issue here is whether the agreement of the parties to add coverage by the Prime Care and Wisconsin Health Organization HMO's should be included in the contract as a continuing requirement, and whether the other HMO's offered under the general

requirement that federally certified plans be offered should be listed in the contract.[7]

While the Village is correct in asserting that the specification of five HMO's in the contract is well beyond the pattern among comparables, the limitation of Village costs in both offers through the use of dollar figures and the requirement that employees pay any excess premiums incurred because of HMO coverage is a safeguard against the stated concern of being at the mercy of the specified carriers. The Union's argument in favor of the change -- going to the employees' desire for stability in their health care providers -- is a reasonable concern, particularly in light of the apparently substantial movement from plan to plan experienced in this unit. On balance, the Union's desire to change the status quo in this respect is reasonable, and the Union's offer is preferred on this issue.

F. Health Insurance Premium Contribution - Both parties propose a dollar cap on health insurance premium contributions. The Union would retain the current system of using the cost of WPS coverage as the benchmark for the dollar figure, while the Village proposes to peg the contribution to the cost of the most expensive HMO. Both parties provide for an automatic increase in the dollar figure to account for increases in premium cost during the term of the contract.

The Village, as the party proposing to change the status quo, bears the burden of justifying the change. It rests its offer on the support of internal comparables, and the guidance offered in Arbitrator Fleischli's 1984 Award. As stated by Arbitrator Fleischli:

> "As the Village correctly points out, absent unusual circumstances, arbitrators tend to favor the extension of internal comparisons to "hold out" groups to avoid the deleterious effect on the collective bargaining process that results if the "hold out" group is ultimately successful...."
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> "For these reasons, the undersigned believes that the central inquiry on this issue is whether there are sufficient special circumstances to justify a refusal to impose the Village's proposal upon the Union

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[7] The Village raises the issue of whether the Union seeks to delete the Village's right to select carriers. It is evident from the second paragraph of Section B(1)(a) in the Union's final offer that such a result is not contemplated, since the procedures therein go to notice of change and information which must be provided to the Union when a change in carriers is decided upon.

through this arbitration proceeding."

Thus the previous arbitrator determined that the internal consistency in favor of the Village offer created a presumption in favor of that offer. He went on to conclude, however, that special circumstances did exist to an extent sufficient to rebut the presumption and justify selection of the Union offer "by a narrow margin". These special circumstances were identified as (1) the special needs of nearly one third of the unit members, which precluded their switch from WPS to an HMO; (2) the failure of the Village to offer any "grandfathering" or other device to reduce the impact of the proposal on employees remaining under WPS; (3) strong support for the Union's position among external comparables; and (4) distinctions in the economic settlements with internal comparables which tended to show more economic value granted those units than had been extended to the AFSCME unit.

The undersigned is in general agreement with the proposition that internal comparisons are particularly compelling in the case of fringe benefits. Uniformity of benefits avoids morale problems and contributes to stable labor relations across the work force. This is not so important a consideration when the internal comparables are mixed as when there is, in the words of Arbitrator Fleischli, a lone "hold out" group. AFSCME, as in 1984, is the "hold out" of the work force. The uniform acceptance of the Village's formula by other bargaining units, in combination with the widespread concern over health insurance costs and their effect on both compensation costs[8] and bargaining, serves to satisfy the requirement that some measure of "need" be shown by a party seeking change in the status quo.[9]

Balanced against the presumed need for change is the practical matter that reducing the range of choices available to employees for health insurance may work a hardship on employees for whom a particular health care provider is necessary. This factor was heavily weighted by Arbitrator

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[8] The Union correctly notes that the switch in carriers in 1986 is still yielding a cost savings for the Village over prior years. This reduces the "need" for change, but the Union's own figures show a 30% increase in cost in the two years following the switch There remains a reasonable concern about containing the cost of health insurance benefits

[9] The undersigned does not hereby suggest that there has been any showing of an inability to pay for the Union offer. As asserted by the Union, ability to pay is not in issue The mere fact that the employer can pay for a particular benefit, however, does not eliminate the possibility that there exists a need for some control over the cost of the benefit.

Fleischli in his 1984 Award. The record reveals that this consideration has decreased in importance for this unit with the passage of time. Only one employee remains in the WPS plan, and the Village has proposed to "grandfather" him at full payment.[10] For this reason, the concrete hardship is essentially eliminated. The Union's assertion that this proposal will reduce overall compensation rates in the contract term is an abstraction, in that it assumes that all employees will pay the difference between the WPS rate and the HMO rate, while as a practical matter no employee will pay that difference.

The undersigned acknowledges the probable truth of the Union's argument that many employees switched to HMO's because of cost considerations during the hiatus period. This may rebut any inference that employees have voluntarily abandoned the WPS, but serves more to confirm the proposition that the number of employees who were forced to remain with WPS because of reliance on a particular provider has significantly decreased since the 1984 arbitration.

The Union continues to enjoy strong support for its position among the primary external comparables. As noted above, however, internal comparisons have somewhat greater force on fringe benefit issues. Further, the Fleischli Award served to advise both parties of the circumstances under which the proposal of the Village would be deemed reasonable. These comments went beyond mere arbitral dicta which might be readily disregarded. They formed the basis of the Award in the Union's favor in the prior proceeding. The employer has satisfied the concerns expressed by Fleischli and removed the disabilities that caused rejection of its proposal in 1984. The immediate economic impact of the use of HMO's as the benchmark for premium contributions has been eliminated by the grandfathering of the lone employee still under the WPS plan, and the migration of other employees to the HMO's serves to show that the special needs cited by Arbitrator Fleischli are no longer a factor. The undersigned is satisfied that the Village has met its burden to justify the change in the status quo on the issue of health insurance premium contributions, and finds that the Village offer is preferable on this point.

V. Conclusion

The final offer of the Union is more reasonable on the issues of Fair Share and specification of HMO's. Neither party's offer is preferred on the issue of

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[10] While the Union contends that five employees remain in the WPS plan, the evidence does not support this contention

Management Rights. The Village's status quo position on subcontracting is more reasonable than the proposal of the Union. On retiree health insurance, the Village enjoys a narrow advantage, primarily on the basis of the Union's unjustified deletion of the option of employee paid continuation for non-qualified retirees. The question of premium contribution caps for current employees favors the Village, as it has shown a uniform internal pattern and has crafted its proposal to avoid direct hardships to employees during the contract term, in accordance with conditions established by the 1984 Fleischli Award.

Taken as a whole, the undersigned concludes that the Village's final offer is more reasonable than that of the Union. The critical issue is that of Health Insurance, where the Village has shown a need for change and an offer reasonably designed to effect change without working undue hardships on employees. While the Fair Share position of the Employer makes this a somewhat closer case than it might otherwise be, consideration of the statutory criteria yields an Award in favor of the Village.

ON THE BASIS OF THE FOREGOING, THE STATUTORY CRITERIA, AND THE RECORD AS A WHOLE, THE UNDERSIGNED MAKES THE FOLLOWING

AWARD

THE FINAL OFFER OF THE VILLAGE, TOGETHER WITH THE STIPULATIONS OF THE PARTIES, SHALL BE INCORPORATED INTO THE 1988-1989 COLLECTIVE BARGAINING AGREEMENT.

Signed and dated this 14th day of March, 1989 at Racine, Wisconsin:

_____

Daniel Nielsen, Arbitrator

Sixth Final Offer of Local 609, AFSCME, AFL-CIO

Affiliated with Milwaukee District Council 48

To the Village of Greendale

A. All signed stipulations and/or tentative agreements reached during current negotiations; and

B. All provisions of the current Agreement (January 1, 1986 through December 31, 1987) shall remain unchanged except as modified by the following:

1. Article XI - Health Insurance (9)

a) Section 1. (A) The parties agree that the Village shall provide hospitalization and surgical care insurance for employees covered by this Agreement and shall pay, effective January 1, 1988 up to $104.23 per month toward the cost of the single premium, and up to $274.01 per month toward the cost of the family premium, plus any increase in premium established for 1989 in excess of the above amounts.

(B) Substitute the following for the existing paragraph (B); In the event there is a change in carrier, the Village shall notify the Union at least thirty (30) days in advance of any change, and shall include all information provided by the carrier to the Village with the notification to the Union. In any event, the Village will contract for coverage for health benefits which are equivalent to the health benefits provided for in the WPS Health Incentive Program (H.I.P.) in 1987.

b) Reimburse all employees who were required to pay part of the premium rate, effective 1-1-88, for their health insurance program.

c) Section 2. Health Maintenance Organizations (HMO): The Village shall offer membership in any H.M.O. which has been certified by the United States Department of Health, Education and Welfare. Family Health Plan, Samaritan Health Plan and Compcare are Federally certified and shall be offered to the employees. In addition to the above H.M.O.'s Prime Care Health Plan of Wisconsin, Inc. and Wisconsin Health Organization (W.H.O.) shall be offered to the employees. Any cost above Section 1 rates shall be paid by the employee.

d) Section 3. The Village agrees that employees with ten (10) or more years of service who retire under the Wisconsin Retirement System at age sixty-two (62) or older during the life of this Contract and employees who retire during the life of this contract under a disability retirement under Chapter 40, Wisconsin Statutes, shall be continued for the balance of their lives as members of the group health insurance plan applicable to the collective bargaining unit under the following conditions:

A. The Village will pay seventy-five percent (75%) towards the cost of the premium.
B. The coverage shall be for retired employees and family. Family is defined in the health plan in effect at the time of retirement.
C. Coverage would be in effect until retired employee qualifies for Medicare.
D. Coverage would not include a retirees' spouse or family after his death.
E. Coverage would not include a retiree while he is covered by another health plan of equal or beter benefit at no additional cost to him.

2. Article XVII - Working Conditions:

A. Delete Sections 1 and 2.
B. Renumber Sections 3 and 4 as Sections 1 and 2.

3. Article (new) - Management Rights:

Section 1. The Union recognizes the prerogatives of the Village to operate and manage its affairs in all respects in accordance with its responsibility and in the maner provided by law, and the powers or authority which the Village has not specifically abridged, delegated or modified by other provisions of this Agreement are retained as the exclusive prerogatives of the Village. Such powers and authority, in general, include, but are not limited to, the following:

A. To determine its general business practices and policies and to utilize personnel, methods and means as it deems appropriate.
B. To manage and direct the employees of the Village, to make assignments of jobs, to determine the size and composition of the work force, to determine the work to be performed by the work force and each employee.
C. To establish qualifications, test, hire, promote, transfer and assign employees in positions within the Village subject to this Agreement.
D. To suspend, demote, discharge, and take other disciplinary action against employees for just cause.
E. To establish reasonable work rules and schedules of work relating to personnel, policy, procedures and practices and matters relating to working conditions, giving due regard to the obligations imposed by this Agreement.
F. To maintain efficiency of operations by determing the method and means and the personnel by which such operations are conducted.

G. To take whatever actions are reasonable and necessary to carry out the duties imposed by law upon the Village, or to carry out the funcitons of the Village in situations of emergency.

H. To introduce new or improved methods or facilities; to change existing methods or facilities.

The Village reserves total discretion with respect to the function or mission of the various departments and divisions, the budget, organization, or the technology of performing the work. These rights shall not be abridged or modified except as specfically provided for by the terms of this Agreement, nor shall they be exercised for the purpose of frustrating or modifying the terms of this Agreement. But these rights shall not be used for the purpose of discrimianting against any employee or for the purpose of discrediting or weakening the Union.

Section 2 - Contracting and Sub-contracting

The Village has statutory and charter rights and obligations in contracting for matters relating to municipal operations. The right of contracting or subcontracting is vested in the Village. The right to contract or subcontract shall not be used for the purpose or intention of undermining the Union nor to discriminate against any of its members. The Village agrees to a timely notification and discussion in advance of the implementation of any proposed contracting or subcontracting. The Village further agrees that it will not lay off any employees who have completed their probationary period and who have regular status at the time of the execution of this agreement because of the exercise of this contracting or subcontracting rights except in the event of an emergency, strike or work stoppage, or essential public need where it is uneconomical for Village employees to perform said work, provided, however, that the economics will not be based upon the wage rates and benefits of the employees of the contractor or subcontractor, and provided it shall not be considered a layoff if the employee is transferred or given other duties at the same pay.

4. Eliminate Memorandum of Understanding

AFM
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6/1/88

SECOND FINAL OFFER OF THE
VILLAGE OF GREENDALE
TO LOCAL 609, AFSCME

MAY 12, 1988

The provisions of the 1986-1987 Contract are to be continued for a two (2) year term, except as modified by the Tentative Agreements dated January 12, 1988, January 27, 1988, and April 11, 1988, and by the following:

1. Article XI - Health Insurance: Revise Article to read:

"Section 1(A). The parties agree that the Village shall provide hospitalization and surgical care insurance for employees covered by this Agreement and shall pay, effective January 1, 1988, up to ninety-two dollars and sixty-two cents ($92.62) per month toward the cost of the single premium, and up to two hundred thirty-eight dollars ($238.00) per month toward the cost of the family premium plus any increase in premium established for 1989 for any Village HMO contract in excess of the above amounts. If an employee elects to be covered under the Village's non-HMO coverage, the difference in premium cost between the non-HMO coverage and the above premium amounts, if any, will be deducted from the employee's paycheck.

Section 1(B). The Village reserves the right of carrier selection and coverage for health benefits. In any event, the Village will contract for coverage for health benefits which are equivalent to the health benefits provided for in the WPS Health Incentive Program (HIP) in 1986. In the event there is a change of carrier, the Village shall notify the Union at least thirty (30) days in advance of any change, and shall include all information provided by the carriers to the Village with the notification to the Union.

Section 2. Retired employees shall be allowed to continue under the above Health Insurance but must pay own premium, except as provided in Section 4.

Section 3 - Health Maintenance Organizations. The Village shall offer membership in any Health Maintenance Organization which has been certified by the United States Department of Health, Education and

Welfare. Any cost above Section 1 rates shall be paid by the employee.

Section 4. The Village agrees that employees with ten (10) or more years of service who retire under the Wisconsin Retirement System at age sixty-two (62) or older during the life of this Contract and employees who retire during the life of this Contract under a disability retirement under Chapter 40, Wisconsin Statutes, shall be continued for the balance of their lives as members of the group health insurance plan applicable to the collective bargaining unit under the following conditions:

A. The Village will pay seventy-five percent (75%) of the specific dollar premiums listed in Section 1(A) in effect at the time of retirement.

B. The coverage will be for retired employees and family. Family is defined in health plan in effect at time of retirement.

C. Coverage would be in effect until retired employee qualifies for Medicare.

D. Coverage would not include a retiree's spouse or family after his death.

E. Coverage would not include a retiree while he is covered by another health plan of equal or better benefit at no additional cost to him."

2. Article XVII - Working Conditions. Revise Section 1 to read:

"Section 1. The Union recognizes the prerogatives of the Village to operate and manage its affairs in all respects in accordance with its responsibility and in the manner provided by law, and the powers or authority which the Village has not specifically abridged, delegated or modified by other provisions of this Agreement are retained as the exclusive prerogatives of the Village. Such powers and authority, in general, include, but are not limited to, the following:

A. To determine its general business practices and policies and to utilize personnel, methods and means as it deems appropriate.

B. To manage and direct the employees of the Village, to make assignments of jobs, to determine the size and composition of the work force, to determine the work to be performed by the work

force and each employee, and to determine the competence and qualifications of the employees.

C. To determine the methods, means and personnel by which and the location where the operations of the Village are to be conducted.

D. To take whatever action may be necessary in situations of emergency.

E. To hire, promote and transfer and lay off employees and to make promotions to supervisory positions.

F. To suspend, demote, discharge, and take other disciplinary action against employees for just cause.

G. To schedule overtime work when required.

H. To create new positions or departments, to introduce new or improved operations or work practices, to terminate or modify existing positions, departments, operations or work practices, and to consolidate existing positions, departments or operations.

3. Memorandum of Understanding: Revise dates in existing Memorandum of Understanding to reflect references to the 1988-1989 Agreement. Accordingly, the Memorandum of Understanding will read as attached.

4. Side Letter. The Village will pay up to one hundred four dollars and twenty-three cents ($104.23) per month for single premium and up to two hundred seventy-four dollars and one cent ($274.01) per month for family premium in 1988 for Dennis Chasser towards WPS insurance, and if Chasser remains in WPS in 1989 and if WPS premium increases in 1989, the Village will pay any higher dollar amount of the premium.

MEMORANDUM OF UNDERSTANDING

The following understandings have been reached by the undersigned parties and shall be considered to be part of the Agreement between such parties in effect from January 1, 1988 through December 31, 1989.

1. In the event that the Village subcontracts work, such subcontracting shall, for the term January 1, 1988 through December 31, 1989, not result in the layoff of or loss of regular straight-time hours for any employee in the bargaining unit who was actively on the Village payroll as of January 1, 1977.

2. As of the date of the first Union request hereinafter made during the term of the 1988-89 Agreement for recognition and bargaining with respect to any clerical employee(s) not included in Article I, Section 1, Recognition clause in said Agreement, the applicability of Article XIX, Union Security, Section 3 and 4, to clerical employees represented by the Union shall immediately end and also as of that time, the subject of fair share coverage of clerical employees represented by the Union shall be subject to immediate reopener.

Dated this _____ day of _____, 1988 at Greendale, Wisconsin.

VILLAGE OF GREENDALE	LOCAL 609, AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES AFL-CIO
By:_____	By:_____
By:_____	By:_____
By:_____	By:_____
	By:_____