BEFORE THE ARBITRATOR

In the Matter of the Arbitration Between VILLAGE OF LITTLE CHUTE EMPLOYEES UNION LOCAL 130-C AFSCME, AFL-CIO and VILLAGE OF LITTLE CHUTE	Case 26 Decision No. 26137A No. 42012 INT/ARB-5218

APPEARANCES:

James W. Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Village of Little Chute Employees Union Local 130-C, AFSCME, AFL-CIO.

Mulcahy & Wherry, S.C., by James R. Macy, appearing on behalf of the Village of Little Chute.

ARBITRATION HEARING BACKGROUND AND JURISDICTION:

On September 20 1989, the undersigned was notified by the Wisconsin Employment Relations Commission of appointment as arbitrator under Section 111.70(4)(cm)6. of the Municipal Employment Relations Act in the matter of impasse between the Village of Little Chute Employees Union Local 130-C, AFSCME, AFL-CIO, hereinafter referred to as the Union, and the Village of Little Chute hereinafter referred to as the Employer or the Village. Hearing on this matter was held on November 1, 1989 in Little Chute, Wisconsin. During the hearing, the Union and the Village were given full opportunity to present relevant evidence and make oral argument. Briefs and reply briefs were filed with the arbitrator, the last of which was received on December 18, 1989. Following receipt of the last reply brief, correspondence challenging the position of the opposing party was filed by both parties, the last of which was received December 30, 1989.

THE FINAL OFFERS:

The remaining issues at impasse between the parties concern insurance and wages although both parties seek a 4% increase in wages in each of the two years of the proposed collective bargaining agreement. The final offers of the parties are attached as Appendix "A" and "B".

STATUTORY CRITERIA:

Since no voluntary impasse procedure regarding the above-identified matter was agreed upon between the parties, the undersigned, under the Municipal Employment Relations Act, is required to choose all of one of the parties'

final offer on the unresolved issues after giving consideration to the criteria identified in Section 111.70(4)(cm)7, Wis. Stats.

POSITIONS OF THE PARTIES:

The final offers in this dispute center on the extent to which employees should share in the cost of providing health insurance during 1989 and 1990. The Village, proposing employee cost-sharing, seeks to no longer pay the entire cost of the health insurance premium and offers to pay a dollar amount equal to 93% of the total cost of the premium in 1989 and to contribute 90% of the premium cost in 1990. The Union seeks to retain the status quo. Both parties propose a 4% increase in wages in each of the two years.

According to the Union, the Village's proposal concerning employee cost-sharing should not be implemented because no "quid pro quo" has been offered and because employees will have to reimburse the Employer for premium payments already made during 1989. Further expanding upon the reimbursement issue, the Union argues that if the Village must be reimbursed, the effect will be to reduce the employees' 4% wage increase by 11 cents per hour while the Village will experience a 6% savings in its insurance costs in the first year and another 4% in the second year. More specifically addressing its "quid pro quo" argument, the Union accuses the Village of offering it nothing in return for the cost-sharing proposal and of trying to get from the arbitrator that which it cannot get across the bargaining table. Further, the Union charges that absent a "quid pro quo," the Village has the burden of proving there is a compelling need to reduce the health insurance premiums costs and that it has not met this burden of proof.

Although the parties differ regarding the appropriate comparability group, the Union, citing the Village's proposed comparables, rejects the Village's effort to justify its proposal based upon comparability stating that while most of the comparables do have employee cost-sharing it is not a new phenomonon but reflects the status which has existed among those comparables since 1985. Also reflecting upon the higher cost of providing health insurance among the proposed comparables, the Union asserts that since the Village's costs have not risen in the same manner the Village's offer is even less justified. As evidence that the Village's costs have remained low in comparison, the Union cites the fact that there was no health insurance cost increase in either 1985 or 1986 and only a slight increase in 1987.

In addition to objecting to the concept of cost-sharing, the Union also objects to an employee contribution of 10% toward the health insurance costs in 1990 based on the extent to which employees cost-share among the comparables. Again referring to the Village's proposed comparables, the Union argues that with one exception all of the comparables pay in excess of a 90% employer contribution.

The Union also rejects the Village's argument that its proposal should be implemented because it is identical to the benefits received by its other employees. Although the Union concurs that the Village's 1989 proposal in this dispute is identical to that which was offered the police bargaining unit, it maintains that they cannot be compared since the police contract, a two-year contract covering 1988 and 1989 which expires December 31, 1989, contained other concessions in 1988 which cannot be ignored. According to the Union, during the 1988 contract year, the police received additional benefits which have not been offered the bargaining unit in this dispute, benefits that

constituted a "quid pro quo" for the employee contribution toward the health insurance premium bargained in 1989. As further support for its position that the Village's offer is not the same as the benefits received by other employees within the Village, the Union argues that the non-represented employees are not being asked to share in the cost of the health insurance even though they received a 3.5% increase in wages in 1989 and will, as management employees, also receive bonuses and step increases which are not available to employees in this bargaining.

The Village, on the other hand, posits that its offer is more reasonable because it is supported by the comparables, both internally and externally and because it has offered a "quid pro quo" to the Union in the form of a higher wage increase than that which is justified by the cost of living increase or the settlements among the comparables. It also maintains that its offer should be implemented because there is a need to control its health care costs.

According to the Village, its offer of a 4% increase in wages constitutes a "quid pro quo" for the cost-sharing proposal it is seeking. Referring to the second year of its agreement with its police bargaining unit, the Village points to the fact that in that year the police settled for a 4% increase in wages and the same cost-sharing proposal made to this bargaining unit and asserts that the police accepted the 4% increase in wages as a "quid pro quo" for the cost-sharing proposal which was implemented. The Village also argues that its proposal should be implemented because arbitrators, including this one, have firmly supported employer efforts to maintain internal benefits at the same level among its bargaining units.

The Village, providing data on the cost-sharing among its proposed comparables, maintains that its offer is completely justified by the external comparisons. Noting that all but two of those it considers comparable not only contribute toward the cost of the health insurance premiums but in some instances contribute more than its proposal to this bargaining unit, the Employer asserts there is adequate support for its position particularly when a comparison of the settlements among the comparables and a comparison of wages are made.

Finally, the Village, relying upon studies which suggest actions which employers should take to stem the rising cost of providing health care, maintains that its offer should be implemented because it is important for employees to participate in the cost of providing health insurance coverage in order to keep health care costs down. In this respect, the Village declares that implementation of its proposal will inform its employees about the cost of providing health care benefits in a meaningful way at a time when the impact will not be tremendous.

In its reply brief, the Union reiterates that the Village, despite its reliance upon cost-sharing among the external comparables as support for its position, has failed to show that cost-sharing among the comparables is reason to implement a similar proposal in this dispute. As support for its position, it again refers to the fact that cost-sharing has existed among the comparables for at least five years during which time the Village has not sought cost-sharing and that there is no evidence that contributions toward the cost of providing health insurance coverage among these comparables has increased during any recent negotiations. (In correspondence following the reply briefs, the Village challenges this position asserting that there was testimony that cost-sharing has increase in at least three of the comparables.)

The Union also re-emphasizes that the internal comparables do not justify changing the status quo in this dispute. Referring again to the second year of the police bargaining unit agreement, the Union holds that the Village continues to ignore that additional concessions were granted by the Village in the first year of the agreement which help constitute the "quid pro quo" that occurred when the police bargaining unit agreed to cost-sharing. It also restates its understanding that the non-represented employees would not be asked to contribute toward the cost of health insurance during 1989. Finally, referring to the Village's case citations in which arbitrators awarded similar benefits among bargaining units, the Union argues that while certain circumstances may justify an arbitrator awarding similar benefits those conditions do not exist in this dispute and therefore there is no justification for implementing the Village's proposal.

The Village, in its reply brief, responds that the Union incorrectly describes the 1988 settlement achieved with the police bargaining unit in hopes of disguising the "quid pro quo" established in the 1989 settlement and argues that if it has not correctly represented what happened, the Union would have had the police union come forward and testify to the contrary. The Village also maintains that the Union incorrectly describes the wage and benefit structure of the supervisory employees. According to the Village, because this dispute has not yet been settled, management employees were granted a 3.5% increase in wages and a "wait and see" position was taken with regard to the insurance premiums. The Village continues, however, that these employees may not automatically participate in the insurance premiums depending on the outcome of this case as "a small 'perk'" since the supervisory staff receives wages based on merit and provide work hours in the absence of automatic overtime. Finally, the Village states that the Union failed to point out that even though the supervisors took less pay in 1989, the Village has decided to have the supervisors participate in the insurance premiums in the same manner as all other union employees effective 1/1/90.

In addition, the Village rejects the Union's argument that the cost-sharing proposal should not be implemented because the employees will need to reimburse the Village for health insurance payments made during 1989. The Employer argues, instead, that a decision based upon this reasoning would penalize the Village for the delays which occurred under the arbitration law and would disguise the substantial wage increase which these employees will receive.

DISCUSSION:

Since comparability is among the criteria used by the parties to support the reasonableness of its offers, the question of comparability must be decided before the reasonable of the offers can be address. Both parties proposed comparables. Among the two sets, four communities, Kaukauna, Kimberly, the City of Menasha and Neenah, are mutually referenced. Absent agreement on the remaining proposed comparables, consideration was given to the similarity of such factors as geographic proximity, size, sources of funding, bargaining history and economic base, where such evidence was available, in determining the weight to be assigned these comparables.

With the recent amendments to Section 111.70(4)(cm)7,d, it is believed that the statute now requires some consideration of all similar employees cited by the parties. Balanced against this requirement, however, is the legislature's intent that such comparisons be considered as they would

"normally or traditionally" be considered in determining the wages, hours and conditions of employment. This suggests that different weights be assigned to the comparables based upon the extent to which their similarities indicate they would be relied upon in voluntary collective bargaining. Consequently, based upon the legislative direction and the comparability factors submitted by the parties, the bargains struck in all of the communities cited as comparables were considered but the greatest weight was assigned to those which the parties agreed were comparable.

Unlike many interest arbitration cases, the instant dispute does not turn on the issue of which wage increase is justified by the general economic and political conditions. Both parties propose a 4% increase in wages in both 1989 and 1990. The Village, however, asserts that its proposal of 4%, at least in 1989, is intended as a "quid pro quo" for the change it is seeking in the status quo regarding its contribution toward the payment of health insurance premiums.

The test for establishing whether or not a change in the status quo should occur is well established. In order to change the status quo, the burden is upon the party proposing the change to prove that there is a need for the proposed change and that a "quid pro quo" has been offered for the change or that the change has been made among other employee groups without any "quid pro quo." In this dispute, the Village asserts that it has offered a "quid pro quo" and that it has secured the change it seeks from its police bargaining unit with the same "quid pro quo." In addition it argues that the change it seeks is supported by the fact that it is attempting to secure similar benefits for its employees. It also argues that the change it seeks is supported by other comparables and that it is needed now when its impact will not be tremendous.

Primary to the Village's argument that its proposal is justified is that the 4% increase in wages it offers is a "quid pro quo" for the cost-sharing change it seeks. In this respect, the Village argues that its settlement with the police bargaining unit during 1989 and a comparison of settlements among the comparables together with a comparison of the wage rates and total compensation paid its employees proves that the 4% increase in wages is an adequate "quid pro quo" for the cost-sharing change.

While there is no question that the police bargaining unit received only a 4% increase in wages and agreed to cost-sharing during 1989, evidence that the increase in wages was a "quid pro quo" for the cost-sharing agreement is not as clear absent testimony from the police bargaining unit or other evidence to that effect. Since the burden is upon the Village to prove that there is a "quid pro quo" in order to justify a change in the status quo, it is not sufficient for the Village to merely assert that the 4% increase in wages was the "quid pro quo" when in fact the agreement reached with the police bargaining unit was a two year agreement and concessions were also made during the first year of that agreement. While the Village would prefer that each year of the two year agreement be considered as separately bargained years, they cannot. In the normal give and take of bargaining a multi-year agreement concessions are frequently made in each of the years and sometimes they are front-loaded in order to achieve certain goals during the term of the agreement. Consequently, since the Union challenges the Village's assertion and there was no clear and convincing evidence to support the Village's assertion, it cannot be concluded that the 4% increase in wages was the "quid pro quo" for the police bargaining unit agreement to share in the costs of the

health insurance premiums.

Further, there is no indication that the proposal sought by the Village in this dispute is an effort to maintain uniform benefits among its employees. The record reflects that the police bargaining unit receives disability insurance in addition to health insurance and that this bargaining unit only receives health insurance. The record also reflects that the non-represented employees had all of their health insurance costs paid by the Village during 1989.* In addition, there is no evidence in the record that either the police bargaining unit or the non-represented employees will share as much in the cost of the health insurance premiums effective 1/1/91 as the Employer proposes in this dispute. Consequently, based upon these facts, it cannot be concluded that the change the Village seeks is needed in order to secure similar benefits for all of its employees.

When an analysis is made of whether or not employees share in the cost of the insurance premiums among the primary and secondary comparables, it is clear the Village's offer is supported by the external comparables. Without demonstrating that there is a need for the proposed change as well, however, the mere fact that the external comparables support the Village's position is not sufficient evidence to rule in favor of the Village.

In this respect, it is noted that while the Village argues there is need to make the change it proposes, a review of the cost of health insurance premiums among the comparables shows that although similar employees among the comparables have shared in the cost of the health insurance premiums, the employer's share of that cost has exceeded the Village's cost in all instances but one in 1988 and in all instances in 1989. While it is not suggested that the Village should not make an effort to keep its insurance costs to a minimum or that employers should all pay the same cost for insurance premiums, the fact that the Village's cost, without cost-sharing, is the lowest of the comparables does mitigate against the Village's argument that there is a need to implement employee cost-sharing now in order to control the escalating costs of health insurance. The evidence clearly establishes that despite the fact that the Village pays the total cost of the health insurance premium in this dispute,

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*This latter fact was the subject of continued debate between the Village and the Union after the reply briefs were filed. In this respect, the Union challenged the Village's assertion in its brief that non-represented employees would participate in health insurance premium cost-sharing effective 1/1/90 and that they had not been required to participate in the cost of the health insurance premium during 1989 because this dispute had not been settled and a "wait and see" approach had been adopted by the Village. Whether or not the Union is correct in its assertion, the fact cannot be ignored that during 1989, the non-represented employees did not share in the cost of the health insurance premiums even if the reason was because the Village had adopted a "wait and see" approach. Also, even if the Village is correct in its assertion that the testimony reflects that the non-represented employees will share in the cost of the health insurance premiums effective January, 1990, the record does not reflect the extent to which non-represented employees will be asked to cost-share.

the need for cost-sharing is not demonstrated. During the first three of the past five years, while insurance premium costs were rising among many of the comparables, the Village's premium rates increased a total of less than 8% and during the last two years, although the rise in cost has increased to a greater extent, the percentage increase has been consistently at the low end of nationwide projected increases and were less than the rise in costs among the comparables who did not change the manner in which health insurance coverage was provided. Since the purpose of cost-sharing is to encourage employees to exercise more care in using health care services and the evidence has not establish any need for these employees to exercise more care other measures such as deductibles or co-insurance should be considered as a more effective way of moderating the increases in health insurance premium costs before cost-sharing occurs as the result of arbitration.

Finally, although the evidence is not sufficient to establish that there is a need for a change in the status quo, the question of "quid pro quo" should also be considered. As evidence that its 4% increase in wages is a "quid pro quo" for the cost-sharing change it seeks, the Village argues that its 4% wage increase is higher than the area settlements and high when compared with the wage rates and total compensation paid other employees performing similar work. An comparison of the area settlements does indicate that the 4% increase in wages the Village offers is higher than the general percentage increase of 3.5% among the comparables but when it is compared with the wage rates among the comparables the Village's argument is less persuasive. A comparison of the wage rates establishes the accuracy of the Village's assertion that its employees are paid well when the rates are compared with the Village's entire set of proposed comparables. The same does not hold true, however, when they are compared with those communities considered most comparable where the rates paid this unit are among the lowest. A total compensation comparison is more difficult to make since the total compensation exhibits do not reflect the cost of additional benefits such as disability, life and dental insurance nor the employer payment of deductibles on the health insurance benefit enjoyed by other similar employees among the primary and secondary comparables. If the cost of these benefits are factored in, it is likely that the overall compensation comparisons would not support the Employer's position as well.

Since the comparison of area settlements, wage rates and total compensation does not conclusively establish that a "quid pro quo" had been offered, the remaining argument which must be addressed relates to the cost impact of the Village's offer to its employees. In this dispute, the effect of the change proposed by the Village would be to reduce its share of the cost of paying the insurance premiums by approximately 7% in the first year and by 10% in the second year. The first year change would result in an approximate $3,300 savings to the Village in first year of the agreement and the second year change would result in an additional $3,400 savings totaling $6,700 in savings in the second year. In return for this savings, the Village states it is offering its employees an additional 1/2% increase in wages during 1989 as a "quid pro quo". The additional 1/2% increase in wages (including overtime, FICA and retirement) equates to an approximate $3,500 increase in total wages in 1989 and an approximate $4,200 increase in total wages in 1990. Consequently, since the agreement being sought is a two year agreement and since the Village seeks an additional cost-sharing concession from its employees in the second year, it cannot be concluded that the 1/2% increase in wages is an effective "quid pro quo" for concessions sought in both years.

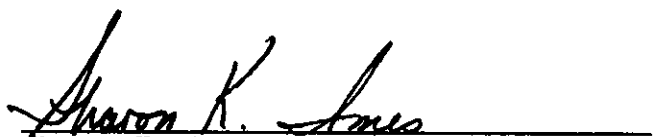
In summary, then, it is concluded that the Union's offer is more

reasonable since the Village was unable to meet the burden of proof needed to meet a change in the status quo. The Village is able to show that it did secure a similar change from its police bargaining unit, is able to show that cost-sharing is supported by the comparables and is able to show that its 4% increase in wage proposal is slightly higher than the settlement pattern for 1989 among the primary and secondary comparables. It is unable to show, however, that it seeks to establish similar benefits among its groups of employees, that other efforts to reduce the rise in cost of health insurance premiums have been made and rejected, that its costs are rising disproportionately higher than the costs among the comparables or that its offer for the first year of the two year contract is sufficient to establish a "quid pro quo" for the cost-sharing changes it seeks in the two year agreement. Based upon these conclusions, the record as a whole and consideration of the statutory criteria which is set forth in 111.70 Wis. Stats., the undersigned issues the following

AWARD

The final offer of the Union, attached as Appendix "A", together with the stipulations of the parties which reflect prior agreements in bargaining, as well as those provisions of the predecessor agreement which remained unchanged during the course of bargaining, shall be incorporated into the 1989-90 collective bargaining agreement as required by statute.

Dated this 14th day of February, 1989 at La Crosse, Wisconsin.



Sharon K. Imes
Arbitrator

SKI:ms

APPENDIX A

The Following is the [redacted] Final Offer of the Union in the Matter of the Village of Little Chute Local 130-C, AFSCME, AFL-CIO for the two year period beginning January 1, 1989 and ending December 31, 1990.

1. Increase wages by 4% each year.

2. All agreed upon items to be placed in Labor Agreement.

May 18, 1989

[signature]

APPENDIX B

Final Offer

of

Village of Little Chute

to

Local 130-C, AFSCME, AFL-CIO

1. Article 19 - Insurance - Modify Section 19.01, line 2, to read as follows:

   "The Employer shall pay up to $264.14 and up to $99.00 per month respectively for family and single premiums. Effective 1/1/90, the Employer shall pay 90% of family and single premiums."

2. Article 25 - Duration - Modify dates to reflect 2 year agreement.

3. Appendix B - Wages -
   a effective 1/1/89 - 4%
   b. effective 1/1/90 - 4%

4. Incorporate tentative agreements.

Dated this 18th day of May 1989.

Donald De Groot