IN ARBITRATION BEFORE
ROBERT J. MUELLER

In the Matter of the Interest
Arbitration Between

VILLAGE OF LITTLE CHUTE
(Department of Public Works)

and

VILLAGE OF LITTLE CHUTE EMPLOYEES
UNION, LOCAL 130C, AFSCME, AFL-CIO

AWARD
Case 31 No. 45750
MA-6039
Decision No. 27067-A

APPEARANCES:

Godfrey & Kahn, S.C., Attorneys at Law, by MR. JAMES R. MACY, for the employer.

MR. JAMES W. MILLER, Staff Representative, for the Union.

INTRODUCTION:

The above-entitled matter came on for hearing before the undersigned who was selected as the sole arbitrator from a panel furnished by the Wisconsin Employment Relations Commission. The parties were present at the hearing and were afforded full opportunity to present such evidence, testimony and arguments as they deemed relevant. Post-hearing briefs and reply briefs were exchanged through the arbitrator.

THE ISSUES:

The parties joined two issues in the case. The first involved offers of a wage increase for each of the two years of the agreement by each party.

The second involved a proposal by the employer to revise Article 19 concerning insurance.

WAGES:

Employer offer: Effective 1/1/91, $ .46 across the board
Effective 1/1/92, $ .60 across the board

Union offer: Effective 1/1/91, $ .46 across the board
Effective 1/1/92, $ .49 across the board

INSURANCE:

Employer offer:

Article 19 - Insurance - Modify Article to read as follows:

19.01 - Health Insurance: Group health insurance will be made available to all full-time employees and their dependents, if any. The Employer shall pay 95% of the premium cost of health insurance effective January 1, 1992.

19.02 - Reservation of Rights: The selection of insurance carriers shall be determined by the Village. The Village agrees to use its best effort to obtain and maintain coverage substantially equivalent to those in effect pursuant to this agreement.

19.03 - Retirement and Death Benefits: Upon retirement, the Village shall continue to provide health insurance for the retired employee and his/her spouse and children until the employee dies. The above provision shall apply to employees hired prior to September 1, 1980. Should any full-time employee die in service to the City, health insurance coverage shall be provided by the Village for his/her spouse and children until such time as the employee's spouse remarries, the employee's spouse becomes eligible for another group coverage, or the children are no longer eligible for dependent coverage.

Union Offer: Status Quo.

STATUTORY CRITERIA

The arbitrator is required to apply the following statutory criteria to resolution of the issues, to wit; Section 111.70(4) (cm) 7, Wis. Stats.

(7) Factors considered. In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall give weight to the following factors:

a. The lawful authority of the district employer.

b. Stipulation 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 district employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

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

f. Comparison of wages, hours and conditions of employment of the district 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 price for goods and services, commonly known as cost-of-living.

h. The overall compensation presently received by the district 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 confirmed 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 the private employment.

DISCUSSION

This is an unusual and unique interest arbitration case. The usual case generally involves a union offer requesting a larger wage increase than that offered by the employer.

This case is not the "usual" case. The union's wage proposal calls for a 4% wage increase in each of the two years of the contract. The employer's proposal calls for a 4% increase the first year and a 5% increase the second year. The employer is offering more than the union is asking. Why?

The employer is attempting to buy a change in the contribution formula for health insurance whereby the employees would contribute 5% of the premium beginning the second year of the contract. Under the old contract and the union proposal to maintain the status quo, the employer pays 100% of the premium costs. Stated in the arbitral jargon of interest arbitrators, the employer is offering a quid pro quo of a .5% higher wage increase in exchange for a 5% employee contribution toward the cost of health insurance. Such half percent is equivalent to 11 cents per hour. The exhibits on insurance reveal that employees are afforded coverage under two alternative plans. The following illustrates the cost of each for the year 1992 and the difference between application of the 95% emploer contribution and the status quo.

Employer offer:	family -	446.22
		436.58
Union offer:		469.70
		459.56

Under plan 1 the employee's monthly contribution at 5% would be $23.48 and for plan 2 it would be $22.98. In cents per hour based on 173 hours per month, it would be 14¢ and 13¢ respectively. The employer is offering employees an 11¢

benefit in exchange for 13-14¢. On its face, that is not an exact quid pro quo.

The employer addresses the quid pro quo concept in its reply brief as follows:

> "First, despite being a fairly accepted principle by arbitrators, the Village maintains that the suggested requirement that employers provide a "quid pro quo" in situations such as in this case is, **not** in accordance with the statutory criteria established in §111.70, Wis. Stats. In addition, since it is an arbitral creation which in practice only applies against employers and not, for example, to Unions requesting wage increases, it suggests a violation of equal protection. The day is coming for judicial review of the "quid pro quo" concept particularly as argued and used by the Union in this case.
>
> In the alternative, even under a "quid pro quo" analysis, the Village strongly believes that its proposal addresses any and all relevant concerns..."

The employer argues that it has demonstrated a need for the proposed change. It is necessary that employees be made more aware of the skyrocketing costs of health insurance through participation in cost sharing. Such concept is necessary as a cost containment measure. The history of negotiations show that the union has repeatedly refused to consider any cost sharing proposal offered by the employer in past negotiations.

Both the internal and external comparables support the employer's offer. The police unit has shared the cost of insurance for several years. They are the dominant unit of the village and it is appropriate that the smaller unit be consistent with the dominant one. External comparables show that none of them provide 100% paid insurance by the employer with no deductibles or co-payment provisions. Additionally, only Little Chute provides coverage for retirees and/or their families to the extent herein provided.

They contend the total package offer of the Village exceeds that of the union, even when one includes the

proposed insurance contribution. (citing Er. Ex. 10 & 12) The employer's proposal does not impose an unreasonable burden upon the employees. It only serves to treat them in an equal fashion to the police employees. Without the change, they would receive preferential treatment as to insurance coverage. The union has shown no reason for such preferred treatment.

Finally, the employer contends their proposal remedies the condition. Internal equity justifies the employer's proposal. The trend in insurance bargaining in the public sector is implement various cost containment and/or sharing conditions and provisions to heighten the awareness of employees to the high cost of insurance.

The union contends the employer's argument that there is a need for its insurance proposal so as to even off or have identical benefits for the village employees, is fallacious. The union calls it "hogwash". (pp.3 of brief) They argue:

> "...If one examines the Police Labor Agreement (Union Exhibit #10) it contains Life Insurance, there is none for DPW Employees. Police officers must reside in the city, DPW Employees do not. Employees in DPW have had one hundred percent (100%) payment of Health Insurance for years and the Employer paid any increases in full (see Employer Exhibit #40), the Police had flat dollar amounts and the Village paid a percentage of increases and their ninety-five percent (95%) payment by the Employer. There was no need then for uniform benefits and there is no need now..."
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> And at page 5 of their brief they state:
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> 1. There is absolutely no evidence in the record to show that the non-represented Employees have ninety-five percent (95%) payment, one hundred percent (100%) payment or flat dollar amounts. If it was uniform it surely would have been shown by the Employer.
>
> 2. The Employer changed Insurance carriers in April 1991 and reduced already low premiums by seventy-two dollars ($72.00) per month.
>
> 3. Union Exhibit #6-A, shows that not one comparable increased the amount paid by the Employee toward Health Insurance Premiums.

4. The Village of Little Chute has one of the lowest cost Health Insurance plans among the comparables. The cost was and is maintained without Employee contribution.

From a broad brush viewpoint, the evidence reveals that the police contract has apparently required some form of employee contribution toward the cost of health insurance for a number of years. The DPW employee contract has not. Such fact standing alone would indicate that the police unit employees have apparently placed greater priority on other issues in their contract as opposed to employee contribution to insurance. On the other hand, such facts indicate that the DPW employees have apparently placed a high priority on maintaining full contribution by the employer. The police have apparently placed a high priority on providing life insurance protection while the DPW employees have not. The contracts of each unit contain other differences, such as a provision calling for defense of police officers by the Village against suits brought by third persons, clothing allowance, hours of work, call-in, etc. Such differences are inherent in the fact that employees render different services and are exposed to different pressures and have different priority concerns.

Internal uniformity is simply not feasible as to some matters. Others are more appropriate to be reasonably uniform. Insurance is generally considered to be one where uniformity is desired. For example, where the coverage of various employee groups is the same, coverage is better understood and explainable. There is generally less confusion as to what is covered and what is not. Employers generally strive to have the same formula applicable to the payment of premiums, whether it be full pay by the employer or partial pay by the employees. That is what the village is attempting to obtain in this case.

In this case, the coverage appears to be under the same

plan for both the police and DPW units. Health coverage is therefore uniform and that is desirable from an administrative standpoint. The total insurance package, however, is not uniform. The police receive life insurance that is paid by the employer. The DPW employees do not. Such fact alone yields unequal treatment as to insurance coverage and as such, is an arguable basis for a differential in payment of premiums. If there were two, three, four or more employee units, other than the police unit, who had identical health insurance coverage, and all such other units contributed toward the cost of insurance, the village would have a much stronger argument supporting a need for the same cost sharing by this unit of employees. They do not have a number of other units in such status and the police unit, being different in needs and coverages, and with a past history of differences in coverages and contributions, does not serve to establish a strong case for equality in contribution to the costs of insurance, in my judgment.

An evaluation of the external comparables in this case involves a number of issues. First, the parties do not agree on which other municipalities and/or towns should be considered as comparables.

The union argues that the ones used as comparables in a recent prior arbitration case decided by Arbitrator Imes, should be used, consisting of Menasha, Neenah, Kimberly and Kaukauna. In addition, they would use Combined Locks, a newly organized village adjacent to Little Chute.

The village uses the same ones but expands the group to include Ashwaubenon, DePere, Grand Chute, Howard and the Town of Menasha. They contend it is the same group submitted to and considered by Arbitraor Imes. While she only referenced the ones mutually agreed upon, she indicated that all were entitled to consideration but that the weight assigned to each would vary.

I have subscribed to the premise that most, if not all,

external wage and benefit data is relevant. The closest one comes to finding employees doing identical work in the same labor market and bread basket market area, the more relevant it becomes for comparative purposes. One first looks for those whose employees perform the same or similar work with the same or similar responsibilities. Secondly one looks to the proximity of the ones being compared, ie; are they in the same labor market and bread basket market area? Thirdly, one looks at other factors, such as size of work force, tax base and AGI per capita, showing comparative ability to pay, etc.

For example, in this case, I consider the cities of Kimberly and Kaukauna to be the most relevant. If one were to use a scale of one to ten, they would be afforded ten each. They are both directly proximate to Little Chute; they are in the same labor market and bread basket market area; their population is reasonably comparable; there is a reasonably comparable ratio of employees to population of the three; and, the AGI per capita of each is reasonably comparable. Both parties have included the village of Combined Locks as a comparable. It's employees apparently do similar work; it is directly contiguous to Little Chute; and, its AGI per capita is comparable to the three above named. Its population, however, is much smaller than the three above-named and there are only 6 employees in the unit. Obviously, it is not entitled to the same weight and consideration as those with greater similarities.

The cities of Neenah, Menasha and DePere are similarly not entitled to the same weight of consideration as are Kimberly and Kaukauna. They are not directly contiguous to Little Chute; they have a much larger population and employ a much larger number of employees; and their AGI per capita is higher. The villages of Ashwaubenon and Village of Howard, while more comparable in population, number of employees and AGI per capita, are not contiguous so as to be in the same labor or bread basket market area.

All are entitled to consideration, however. They are all relevant from an overview to determine the existence of any patterns or trends. The employer contends the exhibits show a trend toward more cost controls being negotiated into contracts. There are more co-pay provisions. There are more and higher deductibles. There are some reductions in benefits, such as elimination of or reduction of drug prescription coverage.

The movement and changes referred to by the employer are few in number. At Neenah, the city traded employee contribution for changes in co-pay and deductible provisions for the year 1992. Those employers who had employee contribution provisions in their contracts in 1990, appear to have retained them for 1991 and 1992.

The exhibits showing the costs of insurance, indicate a fairly wide range in insurance costs. Such exhibits show that the insurance costs at Little Chute have not increased disproportionately from what it has at the majority of the listed comparables over a two year period. The ranges are so variant that it is difficult to discern any relationship or pattern one to the other. (see Employer Exhibit #47, for example) It does appear, however, that the cost of insurance for the employees at Little Chute has not increased as much as it has at several of the comparables. Where the experience of an insured group has caused a higher than normal increase in insurance cost, there would exist greater urgency to implement cost controls. Such need is not shown to be as urgent at Little Chute as it apparently was at some of the comparables.

In analyzing the final offers of the parties from a total package standpoint, the employer has utilized averages computed from the wage rates at the various classifications. (Employer Exhibits 14a thru 19b) The problem with the use of averages as utilized in the employer's arguments is that it serves to afford equal consideration to each of the comparables. For example, DePere, as stated earlier herein,

is not entitled to the same consideration and weight as Kimberly and Kaukauna. The wage rates at DePere for most classifications are higher than are most of the other comparables. Their rate therefore distorts the average.

The same remarks apply to the inclusion of rates at Grand Chute and the Town of Menasha. Their rates for most classifications are substantially lower than comparable rates at the majority of the other comparables. They then distort the averages the opposite way. The wage rates at Kaukauna and Kimberly are in a comparative level with Little Chute. The next tier of comparables consisting of Menasha, Neenah, Combined Locks, Howard and Ashwaubenon are likewise at the same relative pay level for the comparable classifications.

From a wage level standpoint, one cannot say that the rates at any of the classifications are comparatively too high or too low. They are directly at the levels that afford Little Chute relatively equal competitive standing in the labor market in which they operate.

When one next adds consideration of the insurance offers to the wage offers for total package evaluation, very little is changed. In Employer's Exhibits 20 thru 31, the employer again utilized averages of all of their listed comparables. Their computations indicated in all but one classification that the total compensation paid employees at Little Chute exceeded the average. Again, however, the inclusion of Grand Chute and Town of Menasha served to substantially distort the averages. Where those two were excluded, the standings placed Little Chute below the average at most classifications.

In the final analysis, the offers of both parties in this case are reasonable and supportable by application of the statutory factors. While the employer also made a detailed argument concerning the effect of the insurance proposals on the retired employee coverage, I do not find

such aspect to be a large cost factor sufficient to alter one's considerations and conclusions otherwise drawn from an analysis of the wage, insurance and total package aspects of the case.

The bottom line fact of the case is that the employer is offering to buy a "foot in the door" contract provision that would have employees contribute to the cost of health insurance. They have offered to buy such principle for 11 cents per hour. The face value for the second year alone is 13-14 cents per hour. How much quid pro quo is enough. The union has said 11 cents is not enough. The employer contends it is. As interest arbitrator, I cannot answer that question. It is a subjective one that can only be answered in the minds of the opposing parties. My role and obligation as interest arbitrator is to determine which final offer is most favored by application of the statutory factors. In my judgment, both offers are supportable, and neither offer is discernably more supportable than the other. In such case, it seems to me, the party proposing a change from the status quo, has the burden of persuading the arbitrator that a proposed change should be made. In this case I am unable to find that the village has sustained that burden. It therefore follows from the above facts and discussion thereon that the undersigned issues the following decision and,

AWARD

The final offer of the Union is selected and the parties are directed to incorporate those provisions into their collective bargaining agreement.

Dated May 23, 1992.

Robert J. Mueller