STATE OF WISCONSIN

Before the Interest Arbitrator

In the Matter of the Petition	)	
	)	
of	)	Case 6
	)	
Dane County,Wisconsin Employees Local 60 AFSCME, AFL-CIO	)	No. 48450 INT/ARB-6075 Decision No. 27804-A
	)	
	)	
For Final and Binding Arbitration Involving Personnel in the Employ of Village of McFarland	)	
	)	
	)	

APPEARANCES

For the Union:

Jack Bernfeld, Staff Representative

For the Board:

Howard Goldberg, Attorney for Village

PROCEEDINGS

On September, 28, 1993 the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to Section 111.70 (4)(cm)6. and 7 of the Municipal Employment Relations Act, to resolve an impasse existing between

Dane County, Wisconsin Employees Local 60, AFSCME, AFL-CIO, hereinafter referred to as the Union, and the Village of McFarland, hereinafter referred to as the Employer.

The hearing was held on January 6, 1993, in McFarland, Wisconsin. The Parties did not request mediation services. At this hearing the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses and to make such arguments as were deemed pertinent. The Parties stipulated that all provisions of the applicable statutes had been complied with and that the matter was properly before the Arbitrator. Briefs were filed in this case and the record was closed on April 29, 1992 subsequent to receiving the final briefs.

ISSUES

This is a first contract between the Parties. Agreement has been reached on all outstanding issues except for wages and the employer/employee contribution toward the health care plan. The respective offers are as follows:

The Employer offer:

A. The Employer proposes to maintain the status quo for payments toward the health insurance premium and that is 105% of the least costly qualified plan. Effective December 31, 1993 the Village proposes to pay 95% of the premium of the family or single plan selected, and the employees will pay the balance of the premium.

B. Wages - for those employees hired prior to January 1, 1992 the Employer proposes a 3% across-the-board increase January 1, 1992 and January 1, 1993. The Village also proposed wage progression tables for those hired after January 1, 1992. There are progressions for both years of the contract.

The Union offer:

A. The Union proposes status quo on the insurance contribution, that is 105% of the gross premium of the least costly qualified plan.

B. Wages - the Union has rejected the two-tier proposal of the Village and has proposed its own progression for the period 1/1/92 through 6/30/92, 7/1/92 through 12/31/92, and 1/1/93 through 12/31/93.

UNION POSITION

The following represents the arguments and contentions made on behalf of the Union:

The Village is a municipal employer within the meaning of the applicable Wisconsin statutes. The bargaining unit consists of approximately 15 employees in a variety of classifications. This interest arbitration results from the attempt at an initial collective bargaining agreement. While the Union and the Village have agreed on most provisions that will be incorporated into this initial collective bargaining agreement, two issues remain in dispute--the establishment of a salary schedule and the level of Village contribution toward its health insurance program.

The Union proposes 12 communities and Dane County as comparable to McFarland for purposes of this interest arbitration. Those communities are DeForest, Fitchburg, City of Madison, Town of Madison, Middleton, Monona, Mt. Horeb, Oregon, Stoughton, Sun Prairie, Verona and Waunakee. The Village proposes a much smaller set of comparables which would include DeForest, Monona, Mt. Horeb, Oregon, Verona and Waunakee. The selection of comparables by the Village appears to be based simply on population. It chose the three smaller and three larger nearby communities. Like most of the comparable communities proposed by the Union, the Village has been

experiencing a rapid population growth. In 1991 this was 3%, which is consistent with the average growth experienced by the other suburban locales.

McFarland is a relatively wealthy community ranked 5th among the Union comparables on the basis of property value with an average property value of $33,368. While enjoying high property values, the City has maintained a relatively favorable tax rate ranked 8th in taxing effort in 1991. In 1992 the Village reduced its levy rate by 4%, while the average comparable increased its rate by 2%. In 1992 the Village's levy rate was only 92% of the comparable average.

The Village proposes to exclude a number of communities from the comparables. This is the Village's attempt to maintain comparables based solely on population. It is unwarranted and unreasonable. The City of Madison is the hub of an expanding metropolitan area. The only way that some can tell where some of these communities end and others begin is by the sign in the road. The economic and social life of all the communities proposed by the Union as comparable are inextricably intertwined. Employment and commerce are regional, not specific to a particular community. In addition, the location of McFarland in Central Dane County dictates the more expansive list of communities proposed by the Union. In addition, if the relevance of population as the determining value as proposed by the Village

were appropriate, then the exclusion of the Town of Madison is clearly inconsistent with such a proposition. The Union provided a number of citations in support of its view of the comparables. Therefore, it asked that the Arbitrator use its comparables in rendering his decision.

With respect to the wage dispute, the Village has 15 employees in nine classifications. The Union's proposal is to rationalize the Village's pay plan into a pay structure. The Union's proposal is rooted in the current pay structure, while the Village seeks to dismantle. The Parties agree on the framework of a salary schedule. This schedule should contain six pay levels for each classification consisting of a hire rate, a post probation rate, and then steps after one, two, three and four years of service. The Parties agree that movement from one step to another is automatic based on length of service. In the Union's offer the start rate is pegged at approximately 90% of the four-year step. The Village's structure, while similar, is uneven ranging from 85% for administrative assistants to 95% for crewmen. However, the Union noted the usual focus of any municipal pay scheme is on the maximum rate attainable within a classification. This is the true classification rate. The steps and progression are essentially discounted rates to account for a training and learning period and to save the Employer wage costs. The Union admitted that it is difficult to compare jobs that exist in McFarland to jobs in other

communities. Some positions do not routinely exist or are not unit positions. In choosing benchmarks, the Union selected a range of jobs. The Union targeted the key duties of the positions reviewed. In its exhibits the Union attempted to identify classifications that are principally responsible for the primary characteristics of the benchmark. It is the Union's position that the Village did not. It is obvious that the Village selected its comparable positions without regard to the actual duties performed and the level of responsibilities. This approach is of no value for comparative purposes. The Union analyzed three clerical positions maintained by the Village; Deputy Clerk Treasurer, Clerk's Office II, and Court Clerk. It is the Union's position that its proposal either has significant foundation in the comparable or that it proposes a wage progression which is reasonable given the pre-contract rate of the incumbent. The Village's offer meets neither of these criteria and, in fact, will result in a compensation schedule which results in significant decreases in the provided rates of pay.

Regarding the crew, the Village maintains three outside classifications - lead crew, mechanic and crew. The Village employs two lead crew persons, who are paid $13.57 and $12.25, respectively. There is no rationale to justify this difference. The Union has proposed to grandfather the higher rate off the schedule increasing his rate by 4% on January 1 of each contract

year. The Union further proposes to place the lower paid lead crew member on the four year step with increases of 4% January 1, 1993. The Village employs one mechanic. His pre-contract rate is $12.12. The Union proposes to pay mechanics the same as lead crew, whereas the Village proposes to cut the mechanics' rate on their schedule which is below that of any comparable.

The Village employs five crew workers who are paid a variety of rates ranging from $9.40 to $11.00. Employees are told to obtain the Department of Natural Resources DNR Grade 1, Ground Water and Distribution Certification. The pre-contract rate structure for the crew is very low compared with other communities. Only Oregon and Verona pay less. The Union's proposal is a wage structure more in line with the comparables. If the Union's offer were adopted, crew personnel would be compensated at the lower half of the comparable range. If the Village's offer were accepted, only Oregon would pay less than McFarland. Given the Village's reactive wealth, there is no justification to establish a wage schedule for the crew at such an inferior position that would result from the adoption of the Village's offer.

The Village's contention that unit classifications are paid in excess of comparable positions is simply not true. The ranking of many of the classifications surveyed puts them near the bottom of their respective groupings. Even if the Village

were able to demonstrate an above average pay scale, this does not justify cuts in the classification rates that result from its offer. The Union offered a citation in support of this position.

The Village's problem stems from its commitment to a 3% wage increase and its failure to respond adequately and reasonably to bring order to a chaotic pre-contract salary plan. While the Union proposed a rationale and coherent salary schedule, the Village's offer is not coherent. Seven of the employees are off the schedule or are off step. The Village offer of 3% to those off the schedule or off step is unreasonable. In the settlements of all of the comparables for 1992 and 1993 virtually all settlements exceeded 4%, and there was not one wage settlement at the 3% level. The Union also noted that the settlement given to the McFarland Police Bargaining Unit was substantially greater than what it offered to its other employees without any evidence to support the reasonableness of this position. In addition, the Village argued that the Police agreed to the same change in the health insurance contribution formula that it is proposing in this negotiation, yet the Village has not made the same kind of economic offer. Therefore, the internal and external settlement pattern strongly favors the Union's position.

The Village may argue its offer in 1992 is greater than 3% due to the establishment of a wage schedule and, therefore,

acceptable. It is common for the cost of a first contract to exceed that of renewing an established contract. The Village has saved money for years by having a pay structure in disorder. The Union provided an authority in support of this position. The Village has proposed a two-tiered system. This system can only cause discord and problems--an opinion by Arbitrator Zell Rice who is offered as an authority in this area.

The Village may also argue that its offer is closer to the cost of living criterion than the Union's. Its calculations are incorrect. The true cost of living index for 1991 was 3.1% based on the all-urban consumer index and 3.7% for the small metro areas. For the 1992 period the same index was 2.9% and 2.7% for small metro areas. In any event, the consumer price index is but one of many factors to be considered in determining increases in the cost of living. The true cost of living measure is manifested in comparisons of settlement patterns. A number of authorities were cited in support of this position.

With respect to the health insurance dispute, the Village participates in the Wisconsin Public Employers' Group Health Insurance Plan. This plan was established under Wisconsin statutes. The Village proposed that, effective on the last day of the contract, the Village will pay 95% of the premium of the family or single plan selected and the employee will pay the balance. This is compared to the current practice of paying 105%

of the lowest cost qualified plan. It is the Union's position that, not only is this proposal unsound, it is illegal and not in compliance with the applicable statute. This proposal dramatically changes the status quo and is inconsistent with the statutory rules regulating this program. This offer clearly exceeds the lawful authority of the Village as a municipal employer. The adoption of the Village's offer would place the employees' health care at a serious risk.

The Village's insurance proposal is unsound for other reasons as well. There is a significant change in the status quo. The Village bears the burden of justifying such change. The Village offered no exhibits or other evidence to justify this proposal. The only reason stated by the Village for its proposal was because of the agreement with the Police Unit, an agreement that is just as illegal there as it would be here. That is an insufficient reason to warrant adoption in this unit. As discussed earlier, the large pay increase to the Police Unit was a quid pro quo for the insurance change. The Village's offer is without support of any external comparable. Of those not participating in the Wisconsin Public Employers' Group Health Insurance Program, most pay the full cost of health insurance premium. Every employer who participates in this program makes premium contributions based on 105% of the lowest cost qualified plan, because that is the accepted basis for participation. The Union concluded that it is its offer that best meets the

statutory criteria and, therefore, should be adopted by the Arbitrator.

The Union also responded to the Employer's brief. With respect to the comparables, the Village would like the Arbitrator to believe that McFarland is an isolated community and a semi-rural region, perhaps like it was 30 years ago. In fact the Village is part of a mushrooming metropolitan area. It is integrated economically and socially with other communities that a metropolitan Madison. It is no different in that respect from any of the communities proposed by the Union. The Union argued the towns of Dunn and Blooming Grove are not appropriate comparables since there was no showing that these units employ anyone and, if so, whether or not the employees are represented and perform work similar to that done in the Village of McFarland. Also, the Village utilized the 1992 full values' chart at page 5 of its brief. It does not make any assertion as to what this chart demonstrates. In fact, it is relatively meaningless. The value of property in a community is based on different factors. In fact, McFarland is, indeed, a relatively wealthy community. All of the proposed comparables by the Union are part of the metropolitan area, are all related in proximity, population and markets. In addition, Dane County is a large employer. It is also a legitimate and valid comparable. The Union urges the Arbitrator to use its proposed comparables. With respect to the wage dispute, the Village has used for

comparability purposes positions as benchmarks that are not comparable to those in the Village of McFarland. In addition average rates for comparables with split increases are understating the actual rates achieved each year. In addition, in some cases the rates reported for the comparables are simply wrong. A number of examples of each of the above was given by the Union in its reply brief.

With respect to the insurance dispute, it is the Union's contention that the Village devoted little space to defending its insurance proposal. This is not surprising since its proposal is illegal. The Village proposal places into jeopardy its participation in the Wisconsin Public Employer's Group Health Insurance Program and is simply without precedent among any comparable community. Its proposal falls short even if one were to ignore the unlawful nature of it, since the practice in all other communities and the status quo in McFarland is to pay 105% of the lowest qualified plan.

Again, the Union would ask on the basis of the above that the Arbitrator reject the entire offer of the Village and, therefore, select the Union's final offer for inclusion in the Parties' 1992-1993 Collective Bargaining Agreement.

EMPLOYER'S POSITION

The following represents the arguments and contentions made on behalf of the Employer:

This is a first contract for the period of January 1, 1992 through December 31, 1993. Virtually, all of the contract terms have been agreed upon with the exception of wages and the payment of health insurance.

It is the position of the Employer that the employees in the bargaining unit are actually receiving wages which are significantly higher than the wages being paid for similar job classifications in other comparable Dane County municipalities. For that reason the Employer has proposed a 3% wage increase as of January 1, 1992 and an additional 3% wage increase as of January 1, 1993 for all current employees. It has also proposed a lower wage schedule for any new employees that might be hired. The Employer argued that its proposed wage schedule for new employees is superior to the wages being paid to employees performing similar types of work in other comparable Dane County municipalities. In addition, the Employer has agreed that, if the 3% wage increase for either year for any current employee is less than the wages set forth in the Employer's wage schedule, then the higher wage will be paid. The Union has proposed a wage schedule which would be applicable for all employees with

the exception of Darrell Livingston. The wages for Mr. Livingston would be higher than the wages set forth in the Union's wage schedule.

With respect to comparability, the Village has proposed six, the Village of DeForest, Village of Oregon, City of Monona, City of Verona, Village of Mt. Horeb and the Village of Waunakee. The Union has included all of these communities plus six additional, City of Madison, City of Middleton, Town of Madison, City of Fitchburg, City of Sun Prairie and City of Stoughton. Traditionally, arbitrators consider population and geographic factors when determining which communities are comparable to the community being examined. The 1992 population for McFarland was 5,506 persons. The populations for all communities named by the Union, in addition to those named by the Village, are much larger and for this reason alone they should be excluded for comparison purposes. All of the communities named by both sides are located in Dane County and, therefore, are within a reasonably close proximity to the Village of McFarland. If the Arbitrator feels that the dollar value of property in the various communities is an important factor, the Village provided a table on page 5 of its brief.

The Village further argued that the Town of Madison is not comparable to the Village of McFarland. There are 34 towns in Dane County. The Union only presented wage statistics for one of

them. The Village of McFarland is not even in the Town of Madison. It is in the Town of Dunn and the Town of Blooming Grove. If township data is relevant, then it would follow that only the Town of Dunn and the Town of Blooming Grove wage data should be considered. Since the Union did not include this data, it would be an easy inference that this data is not favorable to the Union's position. The Village provided a number of reasons as to why township statistics should not be included in comparison to Village wage statistics.

The Village compared starting wages for new employees under both final offers. The Village admitted it is sometimes difficult to compare positions since there is no standard job description or standard way of allocating work from various comparables. For lower paid clerical positions the average is $7.04 for 1992 and $7.54 for 1993. The Employer's proposal would call for $7.90 in 1992 and $8.14 in 1993; under the Union's proposal, $7.93 in 1992 and $8.25 in 1993. Therefore, it is easy to see that starting wages offered by the Employer are above the wages paid by all of the other comparable communities, and the Union's proposed wages are greatly in excess of those currently being paid and, therefore, not reasonable. The same comparisons made on higher paid clerical positions would find the average for the comparables of $7.27 for 1992, $7.75 for 1993. The Employer's proposal would be $8.50 for 1992, $8.76 for 1993, whereas the Union's proposal would be $9.10 for 1992 and $9.46

for 1993. The Employer's wage proposal is well above the wages being paid in all of the other comparable communities and, again, the Union's proposals are unreasonably high.

Regarding the starting crew comparison, the Village would note that its crew is not required to be DNR certified, however, the Director of Public Works does not discourage employees if they obtain one or more DNR certifications on their own. Utilizing the same comparisons, average rates among the comparables are $8.99 for 1992, $9.63 for 1993. The Employer proposal is $10.30 and $10.61 respectively, while the Union's proposal would be $10.44 and $11.00. Again, the Employer's offer is above the starting wages in comparable communities, and the Union's wage proposal is significantly higher and unreasonable. Lead crew positions averages for the comparables are $10.46 for 1992 and $10.99 for 1993. The Employer proposal would be $11.60 and $11.95, whereas the Union's proposal would be $11.47 and $11.93, respectively. Again, the same as noted above would apply.

Regarding current employee wages, most of the existing employees would be receiving wages under the Employer's offer which are higher than the wages set forth in the schedule that is proposed for new employees. The Village has attached to the brief corrected wage comparison tables for each of the employees who were hired prior to January 1, 1992. Comparing the average

maximum wage of the comparables for 1992 and 1993, the current clerical employees are clearly being paid significantly above average for the higher paid clerical employees in the comparable communities. Likewise, the crew's proposed wage for 1992 and 1993 is higher than the average maximum wage being paid in the comparable communities. This same comparison holds true of the lead crewman position.

With respect to the cost of living, the Employer has offered approximately a 6% wage increase over the two-year period. Some employees will be receiving wage increases in excess of that percentage. The Village's offer is significantly in excess of the Consumer Price Index for all urban consumers for that period.

With respect to internal comparables, the Employer has implemented a 3% wage increase for all non-represented employees for each of the two years at issue. With respect to the Police Bargaining Unit, a larger pay increase was given to law enforcement employees due to the fact that their wages were very low compared with wages being paid in the same comparable communities that have been utilized in this interest arbitration. For those reasons the Village is offering a 3% wage increase in each of the years 1992 and 1993, and a lower wage schedule which is closer to wages being paid to employees in other comparable bargaining units for new employees.

With respect to the insurance issue, the Arbitrator must determine which final offer pertaining to the payment of health insurance premium most closely follows the statutory requirements. The Village is proposing to continue participation in the Wisconsin Public Employers Group Health Insurance Program. While the Village is proposing that employees pay 5% of the premium of any plan that they may choose, the timing of the proposal would not have any financial impact on this bargaining group during the term of the contract under consideration. In addition, the Village of McFarland law enforcement employees have agreed to the same proposal that is in dispute in this interest arbitration.

The Employer asked the Arbitrator to conclude that the data presented and communities selected are the appropriate comparables. The wages paid to those employees performing similar work in those communities clearly show that the Employer's wage proposals are more than adequate. The Village's proposal with respect to health insurance premium will have no economic impact on the employees in the bargaining unit during the term of the contract. That provision clearly gives the employees the message that they cannot simply take their health insurance for granted without concern for what it is costing. For all of the above reasons, the Arbitrator should find the Employer's final offer to be the most appropriate.

The Village of McFarland also responded to the arguments raised in the Union's initial brief. The criticism by the Village of the wage structure which existed prior to the representation election is unfounded. Whatever took place before is simply not relevant to this dispute. The Employer learned when it first commenced negotiations that the wages it was currently paying its employees were already higher than wages being paid to employees performing the same work in other comparable communities. The Village could then either freeze or cut wages so it would be comparable to the others. It could adopt the wages demanded by the Union which would create an even higher disparity or it could give its current employees a reasonable wage increase and create a new wages schedule for new employees hired after December 31, 1991, which would be comparable to wages being paid in other communities. The Employer chose to adopt the third choice because it felt that this was the most equitable approach to all.

All of the employees in the bargaining unit as of beginning of the contract will receive their prior wage levels plus 3% or the wages set forth in the wage schedule, whichever is higher. The entry wage rates are set at a level which is higher than any wage rates paid to employees in any of the comparable units selected by the Employer or the Union. The 3% wage increase is more than adequate when evaluated with the cost of living for the

same period. In addition, the Employer has elected to implement its wage increase in advance rather than follow the normal course which is to wait for the Arbitrator's decision.

The Union's wage offer is not realistic and is much too high. The Union has attempted to justify its proposed wage schedule by comparing the wages paid in the Village of McFarland with communities that are many times larger than McFarland as well as with wages paid to employees who work for the County. The Union derived its proposed 1993 wages by adding 4% to the 1992 wage levels. No evidence was presented to justify such an increase. The Village noted that the Union criticized the former pay rates of the employees, yet it developed a schedule that would include virtually all of the employees in the bargaining unit and which would also provide current employees with a 4% wage increase. That means the wages it is proposing are out of line compared with the wages paid in those other communities that are reasonably comparable to the Village of McFarland in size and valuation. The only way around this dilemma is for the Union to change the rules. Instead of simply comparing McFarland with those Dane County communities that are reasonably close in size and property value, the Union has proposed that the Village be compared to communities that are many times larger in both population and property value than McFarland. Those larger communities generally pay higher wages than the smaller villages. The Union even selected the City of Madison and Dane

County as communities that it wants included into a group of comparable communities. There is no arbitrable precedent cited to support this novel approach. Therefore, the Village again for a number of reasons cited its initial and reply briefs and asked the Arbitrator to find that its comparables are the most appropriate in this case.

It is clear from the analysis set forth in the Employer's initial brief that the wages proposed for both new employees as well as existing employees are superior to virtually all of the comparable communities. This is true despite the fact that the Village of McFarland is neither the largest community by population or by property values of the communities in the group. It is remarkable, considering the fact that McFarland had no Union contract in 1991, that wages are comparable with other communities that were subject to collective bargaining. Contrary to the position taken by the Union, the Village leaders were not exploitative and were motivated by fairness, and the wages proposed are not only comparable but certainly exceed any increases in the cost of living. The Village also argued that, while it is difficult to really know what duties an employee is performing simply by looking at his/her job title, it is not completely impossible. The Union also did not introduce job descriptions from other communities which would have provided better comparability information.

The Union argued that its proposal is in the form of catchup since employees were underpaid many years prior. The record shows that the Village of McFarland employees were never underpaid in comparison to the wages being paid in other communities, and there has been no savings of money as argued by the Union in its brief. The Union also argued that the creation of a two-tier or red circle system is unworkable and causes problems. No evidence was presented to support this contention other than Mr. Bernfeld saying that this was so. The practice is not all that unusual and the Union itself has proposed a red circle rate for Darrell Livingston.

The Union makes further misstatements in its brief regarding the internal comparable wage payments. The Union acknowledges that the Employer gave a 3% wage increase to its non-represented employees. But the Union further disputes that there was any reason justifying the granting of a 6% wage increase for its police personnel. There was testimony at the arbitration position by the Village which stated that the police bargaining unit members were underpaid with respect to comparable communities. This was unchallenged at the hearing and, as such, remains unrefuted.

With respect to the health insurance issue, the Union's main argument is that the Union feels that this provision is illegal. The Union failed to raise this issue prior to the time

of hearing. The final offers to the WERC were amended and amended again. Provisions that are not enforceable because they are illegal would be considered to be non-mandatory subjects of bargaining. Secondly, the Union misconstrued the Employer's offer. Its offer is to pay 95% of the premium as long as it does not exceed the 105% limitation. Under those circumstances the Village would pay 95% of the 105% limitation and the employee would pay all of the rest. This construction of the Employer's final offer is certainly within the limits set forth in the plan and regulations. In any event there is no impact of the Employer's final offer during the term that the Arbitrator is to consider. If in 1994 and later years this issue is raised, then the Union and Village can deal with the problem at that time. Since there is no impact, there simply is no issue for the Arbitrator to consider.

While the Union complained that the timing is sneaky, the Village has offered nothing more here than what it had already agreed to with the Union that represents its Police Department personnel. Internal comparability is important as Arbitrator Petrie noted in page 16 of a decision that was quoted by the Union in its brief. In this case the employees in the Police Department have the exact same insurance as all of the other employees in the Village. It is meaningful to the Employer that all of the Village employees are treated in the same way and this should be meaningful to the Arbitrator. Therefore, for all of

the reasons set forth above the Arbitrator should select the Employer's final offer for inclusion into the 1992-93 Collective Bargaining Agreement between the Parties.

DISCUSSION AND OPINION

Since this is a first contract, the comparables will receive more attention than is normal with renewal contracts. Both the Union and the Village have agreed on six comparables in this case, those being the Village of DeForest, Village of Oregon, City of Menona, City of Verona, Village of Mt. Horeb and the Village of Waunakee. Because the Parties have agreed on these six comparables, the Arbitrator will incorporate each of them into the comparables for this collective bargaining relationship.

The Union has proposed six additional entities, the City of Madison, Town of Madison, Middleton, Stoughton, Sun Prairie and Dane County. The Village has vigorously objected to the inclusion of these additional six entities into the comparables for this interest arbitration.

The Arbitrator's decision regarding the City of Madison and Dane County is relatively simple and straightforward. While it is true, as the Union argued, that Madison and Dane County are at

the focus of an expanding metropolitan area and that the economic and social life of the communities are intertwined, the Arbitrator does not find anything other than proximity that would justify including the City of Madison and Dane County on the comparable list in this arbitration. Every major city in Wisconsin has small villages that are located within commuting distance and certainly the economic impact is great, but the statutory requirements are that these entities be comparable based not only on location, but also on size, structure and other criteria which makes them similar. The Union simply has not proven that either Dane County or the City of Madison is in any way comparable to the Village of McFarland based on size structure and complexity of services.

With respect to the Town of Madison, there was no showing by the Union that townships and villages are ever utilized as comparables for one another. The Arbitrator also notes that other proximate townships in Dane County were not included on the Union's comparable list. This Arbitrator happens to live in a township in Waukesha County, and he notes that the structure and services provided by townships are substantially different than cities and villages located within close proximity. Therefore, the Arbitrator cannot find any justification for including the Town of Madison as a comparable in this interest arbitration.

This leaves us with Fitchburg, Middleton, Stoughton and Sun Prairie. The Arbitrator has considered the proximity services provided, the hiring of like employees, valuation and proximity and finds that, while there are some significant differences in some of the criteria comparability, those three communities are within a range that would justify including them in the final list of comparables. The Arbitrator, therefore, declares that the following communities will serve as comparables in this interest arbitration: DeForest, Fitchburg, Middleton, Menona, Mt. Horeb, Oregon, Stoughton, Sun Prairie, Verona and Waunakee. Excluded will be the City of Madison, Town of Madison and Dane County.

The Village has proposed two changes in the status quo by virtue of its final offer in this case. It has proposed a change in the wage schedule that would provide for, essentially, wages based on across-the-board increases for current employees and a wage schedule for new employees; although the Arbitrator notes that some current employees would find spots on the proposed wage schedule. In addition, the Village has proposed a substantial change in the funding of the health insurance program. The Union, to at least some extent, has also proposed a change in the status quo in that previous to this first contract employees had been hired at a particular rate and then received annual increases without regard to a fixed schedule. The Union has proposed a schedule, which is quite common in public sector

collective bargaining agreements. The Union would propose that all current employees and future employees be placed on the wage schedule with one red-circled exception.

Some have argued that, since this is an initial contract, the status quo does not exist. All bargaining has a starting point, and the starting point in this negotiation and, ultimately, interest arbitration is the terms and conditions that were in existence prior to the Union's representation of this group of employees. Obviously, the Union and Employer found much to agree upon including most fringe benefit issues and language items. They have reduced open issues to only two. Much of this progress can be contributed to the utilization of the concept of status quo as a beginning point for negotiations. Therefore, the Arbitrator finds that the concepts concerning status quo are appropriate to his consideration of the issues before him.

When one side or another wishes to deviate from the status quo, the proponent of that change must fully justify its position and provide strong reasons and a proven need. The Arbitrator recognizes that this extra burden of proof is placed on those who wish to significantly change the bargaining relationship. In the absence of such showing, the party desiring the change must show that there is a quid pro quo or that other comparable groups were able to achieve this provision without the quid pro quo. It is the Village that wishes to more significantly alter the status of

the collective bargaining relationship in this case. The Village has asked for a two-tier wage system and a significant change in the health care funding provision. Therefore, it is the Village that bears an extra burden since it is the Village that proposes the significant changes.

With respect to the wage proposals, both sides agreed as to the difficulty in making comparisons between jobs from community to community. However, both sides made an appropriate effort to pull relevant data out of the morass. The Arbitrator based his decision in this area on the comparables noted above utilizing the highest maximum wage in each year of their contract then averaged this information. Even with this, the data was difficult to compare, the Arbitrator did not consider longevity. The Arbitrator compared seven different job categories--court clerk, office clerk II, deputy clerk/treasurer, crew, crew water/sewer, lead crew and mechanic. With respect to the court clerk, the Stoughton data seemed to be skewed, but comparing maximum averages, the results favor the Union. Regarding the office clerk II, the 1993 averages favor the Union, the 1992 averages favor the Employer. There is not enough data to make a determination with respect to the deputy clerk/treasurer. Regarding the crew, both years favor the Union as does the crew water/sewer. The Arbitrator finds in this category that the Village does not require but encourages them to receive appropriate licensing. The lead crew category favors the

Employer and with respect to mechanics, there is clearly not enough data, but what little data is available seems to favor the Union's position. All in all, with respect to the impact on the employees in the Village, it is the Union's position that is favored regarding external comparables.

The internal comparables, some favor the Employer's position with the exception of the Police Department. The Village maintained that the Police Department was paid significantly less than other comparable communities and, therefore, catchup was required. There was no showing that this was not the case and, therefore, the Arbitrator will accept this argument.

Both sides' proposals are in excess of the cost of living rates, although, as noted by this Arbitrator and other interest arbitrators in Wisconsin, the best criteria for cost of living are external comparables. Total package considerations seem not to be a significant issue in this case. There is also no showing that either proposal would place an undue hardship on the residents of the Village.

We are then left with the Village's proposal of a two-tier wage system. This is a significant departure from the status quo in that, according to the Village's proposal, new employees would receive a lower wage for their entire career than many of those who are currently employed. In reviewing the record of this

case, the Arbitrator finds that the Village simply has not provided enough strong reasons or proven need for this two-tier wage system. Also, in this Arbitrator's experience two-tier wage systems which never result in parity cause significant distress among bargaining unit members. Although this certainly could be bargained out in future negotiations if the Arbitrator were to include this proposal in this interest arbitration, then the two-tier wage system becomes the status quo and is difficult to change. All in all, the preponderance of the proofs and arguments in the wage area of this case favors the Union's position.

With respect to the insurance proposal, the internal comparables favor the Village. The external comparables favor the status quo. The Arbitrator notes that there is no quid pro quo offered as apparently there was in the Police negotiations. While the Arbitrator is sensitive to the significant problems in the health care area, the Village has simply not provided this Arbitrator with an overriding reason and the Village has not fully justified this change in the status quo. With respect to the legality question, this is simply the wrong forum. Determinations of legality should be left to the court system. The Village argued that, since its proposal does not take effect until the last day of the contract, there is no economic impact on the employees during the term of the contract. This is, of course, true. However, as noted above, were the Arbitrator to

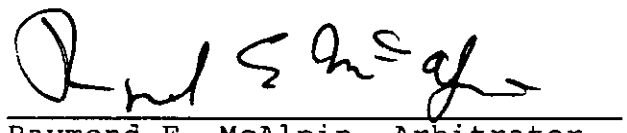
find in favor of the Village, the Village's health care proposal would then become the status quo and again difficult to change.

Therefore, the Arbitrator finds that the preponderance of the evidence favors the Union's proposals and he will award as follows.

AWARD

On the basis of the foregoing and the record as a whole and after full consideration of each of the statutory criteria specified in Section 111.70, the undersigned has concluded that the final offer of the Union is the more reasonable proposal before the Arbitrator, and directs that it, along with the stipulations reached in bargaining, constitute the 1992-1993 agreement between the Parties.

Dated at Oconomowoc, Wisconsin this 26th day of May, 1994.



Raymond E. McAlpin, Arbitrator