BEFORE THE ARBITRATOR

In the Matter of the Petition of	Case 7 No. 53362 INT/ARB-7776
LOCAL 60 (VILLAGE OF DEFOREST UNIT), WCCME, AFSCME, AFL-CIO	Decision No. 28784-A
To Initiate Arbitration Between Said Petitioner and	Heard: 11/13/96 Record Closed: 2/3/97 Award Issued: 3/17/97
VILLAGE OF DEFOREST	Sherwood Malamud Arbitrator

APPEARANCES:

Laurence S. Rodenstein, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1903, appearing on behalf of the Union.

Ruder, Ware & Michler, S.C., Attorneys at Law, by Dean R. Dietrich, appearing on behalf of the Employer.

ARBITRATION AWARD

Jurisdiction of Arbitrator

On July 29, 1996, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Arbitrator to issue a final and binding Award pursuant to Sec. 111.70(4)(cm)6.c., Wis. Stats., with regard to an interest dispute between Local 60 (Village of DeForest Unit), WCCME, AFSCME, AFL-CIO, hereinafter the Union, and the Village of DeForest, hereinafter the Employer or the Village. Hearing in the matter was held on November 13, 1996, at the DeForest Village Hall, at which time the parties presented testimony and documentary evidence. Written briefs of the parties were received by the Arbitrator by February 3, 1997, at which time the record in the matter was closed. Based upon a review of the evidence, testimony and arguments presented by the parties and upon the application of the criteria set forth in Sec. 111.70(4)(cm)7., 7.g., 7.r. a.-j., Wis. Stats., to the issues in dispute herein, the Arbitrator renders the following Award.

ISSUES IN DISPUTE

There are two issues in dispute. The Employer proposes to change the health insurance plan in effect for the second year of a 2-year agreement, calendar year 1997. The Union proposes to amend the language of Article X found in the expired 1994-95 agreement concerning the conversion of the vacation anniversary to a calendar year.

I. HEALTH INSURANCE

The Employer proposes to change the sole health insurance plan, an HMO plan, it provides to its employees. Although offered by the same HMO, it is a less costly plan. The Employer proposes to change from the Physicians Plus Plan to the Physicians Plus Copay 15 Plan. The change in plans would occur on January 1, 1997, or as soon as practicable, subsequent to the issuance of this Award.

The Employer will pay each employee a $60 lump sum payment in January 1997.

The Union proposes to retain the status quo. It proposes to continue in effect the Physicians Plus medical plan in existence during the term of the expired agreement and continuing into the first year of this proposed two-year agreement.

II. VACATION

The Union proposes to add the following language to Article X, Section 1(d), as follows:

> In any event, no employee shall be provided any less vacation for which he/she is eligible pursuant to Article X, Section 1(a), as the result of the Village's conversion of vacation to a calendar year basis.

The Employer proposes to carry forward the language of Article X, Section 1(d), as it appears in the 1994-95 Agreement without any addition or change.

STATUTORY CRITERIA

The criteria to be used to resolve this dispute are found in Section 111.70(4)(cm)7, Wis. Stats. Those criteria are:

> 7.'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.
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> 7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.
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> 7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:
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> a. The lawful authority of the municipal employer.
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> b. Stipulations of the parties.
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> c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
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> d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
>
> e. Comparison of the wages, hours and conditions of employment of the municipal employes

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

f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.

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

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

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

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

BACKGROUND

The central issue in dispute relates to the health insurance coverage for the ten Public Works and Village Hall employees in this unit. The Employer proposes to retain Physicians Plus as the sole Health Maintenance Organization it offers to its employees. It proposes to change to a different plan, Copay 15 provided by this HMO.

The Union proposes to retain the status quo and continue the Physicians Plus Plan in effect, during the term of the 1994-95 contract and in effect during calendar year 1996, the first year of this successor Contract.

The Union and the Employer agreed on all other matters in dispute. They agreed on all other provisions of the successor agreement for calendar years 1996 and 1997, including wages and classification adjustments, as well as changes in the dental and disability insurance programs of unit employees. The parties agreed that on January and July 1 of 1996 and 1997, unit employees would receive 2% increases.

During the presentation of evidence at the arbitration hearing, the Union submitted its Exhibit #4. It describes the Physicians Plus Plan in effect during the term of the expired 1994-95 agreement. At that point, the Employer interjected and referred to a document that it transmitted by facsimile only the day before the arbitration hearing that sets out some changes in the Physicians Plus Plan unilaterally made by the carrier and in effect during calendar year 1996. The changes made by the carrier/health care provider are as follows. It increased the copay for use of emergency room from $25 to $50. The limit on out of pocket payments for Durable Medical Equipment increased from 20% of $500 to 20% of $1000. Finally, the maximum employee copayment for prescription drugs went from $80 to $160. The Union believed that these three changes were part of the change in benefits that would result from the implementation of the Employer's proposal to switch to the Physicians Plus Copay 15 Plan.

The significant difference between the existing Physicians Plus Plan and the Copay 15 Plan are as follows. Under the Copay Plan, there is a $15 charge for adult routine examinations and adult office visits. The $5 copay charge for children's visits and allergy shots were originally listed in the schedule of benefits provided by the Employer during the parties' negotiations. In correspondence subsequent to the hearing, the Employer notified the Arbitrator and the Union that the insurer waived the children's visit and allergy shot payments for calendar year 1997.

Another issue came up at the arbitration hearing. In February 1996, the Employer and Union bargaining committees reached a tentative agreement that includes the change in health insurance to the Physicians

Plus Copay Plan effective January 1, 1997, and the payment of the lump sum payment of $60 in the first payroll period of January 1997. However, the Union membership rejected this tentative agreement. The Union objected to the Employer's introduction of any evidence regarding the tentative agreement. The Arbitrator reserved ruling on the Union's objection. He indicated that he would rule on the Union's objection in this Award.

With regard to the vacation issue, it arises out of the parties' agreement in negotiations for the 1994-95 contract to permit the Employer to convert to a calendar year anniversary for vacation purposes. In late fall 1995, the Employer elected to implement the calendar year anniversary system. It notified unit employees of the manner in which their vacation eligibility would be calculated and their respective entitlements established. The Union disagreed with the Employer's application of the vacation language. It filed a grievance. This grievance was processed through the grievance procedure to the point of the selection of an arbitrator. From the record evidence, it appears that no arbitrator was selected. The Union proposes this additional language to Article X to insure that employees do not lose nor eligibility for vacation of longer duration delayed as a result of the Village conversion to a calendar year (January 1) anniversary date.

In addition, the parties disagree over the group of comparables to which the utility, public works crews and Village Hall employees are to be compared. The population of DeForest is 5,976. Both parties agree that McFarland, Mt. Horeb, Oregon, Verona and Waunakee are comparable to the Village of DeForest. The Union proposes a list of 13 comparable communities, inclusive of the above communities, that range in size from Black Earth with a population of 1,370 to the City of Madison with a population of just under 200,000. The Union adds Black Earth, Fitchburg, Lodi, the City and Town of Madison, Middleton, Monona, and Sun Prairie as comparables to DeForest. The Employer proposes the City of Columbus and Lake Mills as comparables to DeForest.

The parties present the following arguments in support of their respective positions.

POSITIONS OF THE PARTIES

The Union Argument

The Union argues that the Employer's offer is unreasonable. Most of the comparable employers, whether one considers the comparables proposed by the Union or those proposed by the Village, offer their employees the Wisconsin Public Employers Group Health Plan (the State plan). The State plan affords the participants in the plan a selection from among a number of Health Maintenance Organizations, such as, DeanCare, Group Health Cooperative, Unity-University Plus, as well as a standard indemnity plan. DeForest offers only the Physicians Plus HMO.

Here, the Employer proposes to modify that plan and adopt one that introduces disincentives to early detection of disease and wellness principles which are the foundation of the HMO program. Traditionally, the prepayment of fees for participation in an HMO assumes that early intervention and wellness programs will either prevent illness in some participants or moderate the severity of medical conditions that participants may contract and thus save expenditures for medical care. The Physicians Plus Copay 15 Plan introduces a disincentive to employees obtaining early intervention and undergoing routine medical examinations in which medical problems may be detected early. The Union argues strenuously that the Copay Plan is contrary to public policy.

The Union argues that the Employer proposes to change the status quo. Accordingly, it must demonstrate a need for change and offer a quid pro quo for that change. The Union notes that the premiums for health insurance for the current Physicians Plus Plan have not increased over the term of the successor agreement. The premium in effect for 1996 was $465.75 for family coverage and $172.50 for single coverage. Those costs remain the same in 1997. The Employer's proposal to go to the Copay Plan would reduce those premiums to $420.15 for family coverage and $155.62 per month for single coverage.

The Union emphasizes that as part of the stipulation of agreed-upon items, the Employer obtained a substantial savings in insurance costs. The Union has agreed to change from a freestanding dental program with

premiums that would have been $83.61 per month for family coverage in 1997 and $32.02 for single coverage to change to a preferred provider option program administered by Blue Cross Blue Shield with monthly premiums for family coverage of $55.79 and $19.33 for single coverage. In addition, the Union has agreed to substitute a long-term disability policy for a short-term disability plan. This program shift results in additional savings to the Employer. The Union argues that the savings on insurance under the Employer's proposal are of such magnitude that they equal a 4% increase in wages in 1997. For that reason, the Union maintains that the $60 lump sum payment in 1997 is an inadequate quid pro quo for the $547.08 savings per employee taking health insurance family coverage.

The Union argues that the Village's proposal to change the health insurance plan lacks comparable support. No comparable offers an HMO plan that requires copay for office visits for adults or children. The Union notes even the City of Columbus and Lake Mills do not offer plans with such copay requirements.

The private sector comparables offered by the Employer are both nonunion. It is unclear whether Demco is located in the Village of DeForest.

The Union complains about the inaccurate data provided to it during bargaining. It argues that the Employer offer is illegal, Menomonee Falls School District, 22333-A (Malamud, 11/85). The unilateral changes made by the insurer prevent the Employer from implementing its final offer should the Arbitrator select it for inclusion in the successor agreement. The Employer's final offer calls for a $5 copay for child office visits and for allergy shots. Yet, the HMO does not incorporate that limitation in its copay plan. The Union questions the reliability of the benefits stated in the Physicians Plus Copay plan, when the insurer feels free to change those provisions unilaterally. The Union wonders what impact these changes would have on premium rates.

The Union meets the Employer argument that all other employees of the Village already participate in the Copay 15 Plan. The only other represented unit is the police unit. Salaries of police officers are much higher than those of employees in this unit. The payment of a $15 fee for an office visit represents approximately an hour and a half's pay for members of

this bargaining unit. The copay obligation represents a significant disincentive to visit the doctor for preventive care.

With regard to the vacation issue, the Union argues that the Employer altered the method in which it calculated vacation under the annual (January 1) anniversary conversion process. The Union maintains that employee entitlements to increasing amounts of vacation after more years of service would be delayed by the Employer's proposed implementation of this language. The Union maintains that the only effect of its proposal is to insure that employees would not lose benefits to which they are entitled.

In its reply brief, the Union argues strenuously that the Arbitrator should not consider the tentative agreement reached by the parties and rejected by the Union membership. It cites a number of arbitration awards that address this issue. If arbitrators impose tentative agreements that are rejected by a negotiating committee's principal, then those committees would be reluctant to risk arbitral imposition of a tentative agreement. Arbitrators should not give tentative agreements determinative weight. It would make the process of reaching an agreement through voluntary negotiations that more difficult. Ladysmith School District, 19803-A (Krinsky, 4/83); Stevens Point School District, 20952-A (Krinsky, 5/84); Barron Area School District, 26651-A (Krinsky, 4/91); Randolph School District, 21013-A (Weisberger); Sheboygan County, 16585-A (Weisberger, 4/79); New Auburn School District, 19436-A (Vernon, 1982); City of Marshfield, 27038-A (Kessler, 8/92). The Union quotes extensively from this Arbitrator's award in DeSoto School District, 21184-A (Malamud, 7/84), in which he ignored the Board of Education's rejection of a tentative agreement reached under the auspices of the mediator/arbitrator.

The Union cites Village of Little Chute, 27067-A (Mueller, 3/92) who confronts a situation in which the police unit contributes towards the health insurance premium while the DPW employees did not. The Union maintains that with a small employer, it is not unusual for there to be some variation between the level of benefits for police employees and other employees. In its reply brief, the Union lists many differences between the police and DPW Village Hall employee contracts.

The Union quotes with approval from the award of Arbitrator Grenig in D.C. Everest School District, 21941-A (Grenig, 2/85) who opined that the arbitrator is limited to determining which final offer is preferred through the application of the statutory criteria. Similarly, Arbitrator Grenig in Rock County, 22551-A (Grenig, 10/85) noted that a determination of whether bad faith bargaining occurred does not fall within the jurisdiction of an interest arbitrator, New London School District, 20101-A (Petrie, 6/83). That issue should be addressed in another forum. Finally, the Union relies on this Arbitrator's analysis in Oneida County, 28021-A (Malamud, 10/94), in which this Arbitrator held that little weight should be given to the give and take of negotiations that precede the parties' participation in interest arbitration.

The Union concludes by noting that insurance premiums did not increase for 1997. There is no need for a change. No other comparable provides for the copay provision that is a key part of the proposed HMO plan offered by the Employer. The Union maintains that its offer already substantially reduces total health, dental and disability costs. Accordingly it requests that the Arbitrator select the Union's final offer for inclusion in the successor Agreement.

The Employer Argument

The Employer argues that the Union's proposed comparable pool includes communities that are many times larger than DeForest, such as, the City of Madison. It includes much smaller communities, such as, Black Earth. The determination of the comparability pool may substantially impact future bargaining. The Employer argues that Columbus and Lake Mills should be included in the comparability pool. The Employer agrees that the communities of McFarland, Mt. Horeb, Oregon, Verona, and Waunakee are comparable to DeForest. The Employer acknowledges that the Town of Madison both in population size and equalized value may serve as an appropriate comparable to DeForest.

The Employer argues that the comparability criterion, the comparison of the health insurance benefit offered by the Village to the health insurance plans provided by other comparable employers support the selection of its final offer. The Employer argues that employees in the comparability pool

who participate in the State plan often must contribute towards the cost of premium based on the HMO they select. Under the State plan, the Employer pays 105% of the lowest HMO quoted premium. In some cases, the full premium is paid. In others, it is not. Other employees are subject to health insurance plans that require the payment of deductibles or require a contribution towards the payment of premium.

The Employer acts appropriately when it takes advantage of a plan with more reasonable rates for health insurance that nonetheless provides extensive coverage to its employees. The Employer maintains that settlements reached in other units of the Employer provide a strong support for adoption of its offer. The Employer notes that internal comparability often is determinative of such disputes, Marinette County (Sheriff's Department), 22910-A (Malamud, 4/86); Sauk County (Highway Department), 26359-B (Vernon, 11/90); Marinette County (Social Services), 22574-A (Grenig, 9/85); Dane County (Sheriff's Department), 25576-B (Nielsen, 2/89); Green County (Highway), 26979-A (Rice II, 3/92); Winnebago County, 26494-A (Vernon, 6/91). Consistency in benefits, especially health insurance, has long been recognized by arbitrators as an important guiding principle, citing Greendale School District, 25499-A (Malamud, 1/89); Village of Shorewood, 26625-A (Kerkman, 7/91).

The Employer points out that the police unit has agreed to the Copay 15 Plan. That plan was implemented on January 1, 1996.

The Employer argues that the tentative agreement should be considered. It quotes extensively from this Arbitrator's Award in Douglas County (Highway Department), 28215-A (Malamud, 3/95); Village of Schaumburg, Illinois, (Fleischli); City of Wauwatosa, 27869-A (Flaten, 8/94).

The Employer argues that it meets the status quo analytical framework expressed by this Arbitrator in Greendale School District, 25499-A (Malamud, 1/89), and repeated in other awards. The Employer notes that there is a need for the change. It attempts through this proposal to introduce a health insurance plan that would be the same for all its employees. The Employer maintains that it offered an adequate quid pro quo for this change. It agreed to raises that provide a lift far in excess of any agreed to raises with the police unit who received 2.5% and 3% raises in

1996 and 1997. Here, the Employer has agreed to four 2% increases at 6-month intervals. In addition, the Employer provides a $60 lump sum payment in January 1997. The Employer notes that several classifications that comprise a substantial portion of this unit received additional boosts in pay.

The Employer maintains that its offer best meets the factor the interest and welfare of the public, 111.70(4)(cm)7.r.c. in that it eliminates any envy between groups over differing health insurance plans. The Employer quotes with approval from the decision of Arbitrator Vernon in Elkhart Lake School District that an employee contribution towards health insurance sensitizes employees to the value of the benefit. Elkhart Lake School District, 26491-A (Vernon, 12/90).

With regard to the vacation issue, the Employer maintains that the dispute is a rights grievance rather than a matter that should be subject to an interest arbitration decision. Furthermore, the Employer maintains that the Union proposal injects uncertainty and ambiguity into the agreement. On that basis alone, the Arbitrator should reject the Union's final offer citing this Arbitrator's award in Pierce County, 25009-A (Malamud, 5/88).

The Employer concludes that its final offer maintains the Employer's full payment of health insurance premiums for employees. It offers to switch to a plan that provides broad coverage to employees but at a lower cost to the Employer. The Employer's offer results in a net savings to taxpayers. The Employer argues that the minimal copay feature will not dissuade employees from obtaining necessary medical treatment. The Employer maintains that after the Arbitrator has applied the statutory criteria to the final offers of the parties, the Arbitrator will conclude that the Employer offer is more reasonable than that of the Union's.

DISCUSSION

The Comparability Pool

Both the Employer and the Union agree that the communities of McFarland, Mt. Horeb, Oregon, Verona and Waunakee serve as appropriate comparables to DeForest. All of the above comparables are located within

Dane County. They are impacted by the labor market of the general Madison metropolitan area.

The communities that are appropriate comparables to DeForest should be located in Dane County. Accordingly, the Arbitrator finds that the City of Columbus which is located in Columbia County and abuts Dodge County and Lake Mills which is located in Jefferson County are not appropriate comparables to DeForest. Similarly, Lodi which is located in Columbia County is not an appropriate comparable to DeForest. The cities of Monona and Middleton are communities that have populations that are not that much larger than DeForest, however, the equalized value and financial resources of those communities far exceed that of DeForest. The Cities of Madison and Sun Prairie are many times larger than DeForest and do not serve as appropriate comparables to DeForest. For purposes of this DPW Village Hall employee unit, the Town of Madison is an appropriate comparable.

In this Award, the Arbitrator notes those communities that are appropriate comparables and those that are not. The parties in the course of their bargaining may identify other communities in Dane County that are similar in population and financial resources that would serve as appropriate comparables to Deforest. Since this is the first arbitration proceeding between these parties and since comparability is not a pivotal factor in the determination of this case, the Arbitrator believes that a slightly larger comparability pool would be of assistance to the parties in their bargaining. The Arbitrator leaves to them to identify additional communities in Dane County that may serve as appropriate comparables to DeForest.

7rd. Comparability of Similar Employees to Employees in Similar Communities

The Union argues that the comparability criterion provides no support for the Employer's proposal. In one sense, that statement is true. The evidence reflects that no benefit plan offered by any other employer provides for payment of a $15 fee for adult office visits for routine care and physical examinations. No other plan provides for $15 payment for an adult chiropractic visit.

On the other hand, the Employer correctly notes that even under the State plan, some employees must contribute towards the cost of the HMO plan in which they are enrolled. If the premium for the plan in which they are enrolled exceeds 105% of the HMO with the lowest premium, the employee must make up the difference. The Town of Madison requires employee contribution towards the cost of premium. In that case that contribution is 10% for family coverage. The Union does not claim that the out of pocket costs to DeForest employees would exceed what other employees may have to contribute to maintain participation in an HMO that exceeds the 105% of the lowest plan. In 1997 DeanCare at $428.86 is the lowest premium HMO.

Employees who select Physicians Plus whose premium is $436.60 would have their entire premium paid to maintain coverage in the standard Physicians Plus Plan that is similar to the plan currently in effect in DeForest and which the Union proposes to continue in effect under its final offer. Since most of the comparables participate in the State plan and Mt. Horeb, like DeForest, only offers the Physicians Plus HMO to its employees, the comparability criterion provides substantial support for the adoption of the Union's final offer.

The DeForest Schools offers its employees an indemnity plan with the Wisconsin Education Association Insurance Trust. That plan provides for $100/200 deductible. Employees contribute 10% towards premium that amounts to $51.66 per month. This evidence tends to support the Employer's final offer. The employees of the school district pay substantially more than the copay that this unit of the Village's employees would expend in a year.

The Arbitrator gives little weight to the private sector evidence proffered by the Employer concerning the nonunion companies Demco and Burton Rubber. Employer Exhibit #9 is a publication of the DeForest Area Chamber of Commerce. Although the list of local companies is not complete, neither company appears in this exhibit. Other employers such as the Walgreens Distribution Center, Evco Plastics and American Breeders Service are relatively large employers in this community, yet the health insurance programs they offer were not introduced into evidence.

Consequently, the Arbitrator gives little weight to criterion 7r.f. in this Award.

Conclusion

The arbitrator concludes that this statutory criterion provides substantial support for the inclusion of the Union's final offer in the successor agreement.

7r. a. The Lawful Authority of the Municipal Employer

The Union argues that the unilateral changes made by the carrier, Physicians Plus, prevents the Village from implementing its final offer should the Arbitrator select it. The insurer eliminated the $5 copay for children's visits and for allergy shots.

The Employer argues that the language of Article XII - Insurance contemplates that the insurance provider may change the terms, conditions and limitations of the plan during the term of the Collective Bargaining Agreement. For that reason, the language of Article XII, Section 1 provides that "The plan . . . shall be subject to the terms, conditions and limitations imposed by said plan." This language continues into the successor agreement under both final offers. The language at issue is the identification of the plan. The Union would continue the reference to the Physicians Plus HMO and the Employer would change that reference to the Physicians Plus Copay Plan.

Negotiations for the successor agreement began in 1995. From the commencement of those negotiations until the issuance of this Award, approximately 1-1/2 years will have passed. It is not surprising that a health insurance carrier would make adjustments to its benefit program. The parties' language contemplates such changes. The Union's argument that the Employer cannot implement its final offer should it be selected is without merit. Accordingly, the Arbitrator concludes that this criterion does not favor the selection of either final offer.

c. The Interest and Welfare of the Public

The Union argues that the Employer's proposal to adopt an HMO plan that injects copay features runs contrary to the underlying philosophy of HMOs. The Union presented an article it obtained off the Internet published by the Massachusetts Association of Health Maintenance Organizations (MAHMO) that references studies that compare treatment of patients under HMO plans and fee-for-service policies for various kinds of illnesses and disease. The Village challenges the impartiality of the studies reported by this organization of Massachusetts health maintenance organizations.

The Union also refers to abstracts of studies that compare treatment of certain cancer patients by HMOs and those in fee-for-service programs. Finally, the Union placed in evidence a publication of the Wisconsin Office of the Commissioner of Insurance that defines terms and describes the various forms of insurance available. It is not surprising, therefore, that the parties did not reference studies that indicate whether a $15 copay for an adult office visit or for a routine physical examination would serve as a disincentive to obtain routine care for employees who earned the wage level of employees in this unit.

For its part, the Employer presents articles from 1989 and 1991 concerning cost containing measures and cost shifting efforts that employers were making during that time to moderate the increase in health insurance premiums. The Employer argues that the copay feature will alert employees to importance of the health insurance benefit provided by the Employer. The Union objects to this paternalistic argument.

After the national debate on health insurance that occurred in 1993-94, it is this Arbitrator's opinion that employees need no reminder of the value of the health insurance benefit provided by an employer. In weighing the two proposals under this criterion, it is unusual for an HMO to introduce fees for office visits. Upon weighing the relative merits of the two plans, that proposed by the Union and that proposed by the Employer, the copay plan's partial abandonment of the HMO philosophy should be avoided. There is an absence of data relative to the impact of fees for regular office visits; whether people are dissuaded from seeking care. This supports the

Union's position that the employees of the Village of DeForest should not be the unwilling subjects in an experiment to determine the elasticity of demand of routine medical and chiropractic care for adults.

In addition, it appears to the Arbitrator that the large discount in premium, approximately 10%, is provided to encourage purchasers of health insurance to try the plan. The discount does not appear to be related to savings in premium or in the administration of the plan afforded by the copay provision. The nonrepresented employees have participated in the copay plan since 1994. There is no evidence to suggest that the provider simply raises the premium shortly after an employer selects this product. Despite this latter point, the Arbitrator concludes that this portion of the interest and welfare criterion provides strong support for the continuation of the existing health insurance plan.

The Arbitrator reviews the cost differential of the two plans under this criterion.[1] The switch in plans generates a large cost savings of $547.08 per employee taking family coverage. The Employer pays the full premium. Consequently, that substantial savings would greatly impact the total cost of the wage and benefit package. Neither party presented costing data for the wage and health insurance settlement. No data was submitted from the carrier as to its experience with the office visit fees that it has imposed. There is no evidence as to the number of adult visits per family that the HMO projects would be subject to the office visit fee.

It appears to the Arbitrator that the payment of the $60 lump sum anticipates, in some respect, the cost of the $15 office visit fee.

In its brief, the Union charts the savings generated by changes in dental and disability insurance agreed to by the parties in the stipulation of agreed upon items. The parties agreed to switch from a freestanding dental program with a 1996 premium of $83.61 for family coverage to a preferred provider plan(PPO) for 1997 with a premium of $55.79 for family coverage. This amounts to a savings of $27.82. In addition, the Union agreed to go

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[1] The matter of cost may be addressed under several criteria. In this case, the interest and welfare of the public, appears to this Arbitrator as the most appropriate criterion for a full discussion of this aspect of the dispute.

from a short-term disability program to a long-term disability plan that generated $7.56 per month in savings. The former disability program carried a premium of $15.75; the LTD plan premium is $8.19. The Union emphasizes that with the savings in dental and LTD, the continuation of the present health insurance plan, as proposed in its final offer, generates a monthly savings in 1997 over 1996 of $35.38 per month.

In most other respects, the Copay plan provides the same broad range of coverage and benefits as the current plan. The Employer's proposal provides most of the same benefits for a lower price. This provides a savings to the Employer and the local taxpayers of the Village.

Conclusion

One portion of the interest and welfare criterion provides significant support to the adoption of the Union proposal. Its proposal does not subject the employees of this unit of the Village to serve as subjects in an experiment to determine the level of fees for office visits that an HMO may set that will (not) discourage employees from taking full advantage of the benefits of that plan.

On the other hand, the significant premium savings generated do not appear to be short lived. There is no evidence of fluctuation of premium after the Village non-represented employees began to participate in the Copay plan in 1994-95. The Copay plan affords employee participants a wide range of benefits and coverage. This evidence provides strong support for the selection of the Employer's proposal. The positive and negative forces that come into play in considering this criterion offset one another. As a result, the Arbitrator concludes that ultimately this criterion does not provide a basis for selecting either final offer for inclusion in the successor Agreement.

j. Such Other Factors . . .

A number of independent matters come into play under this criterion. The conduct of the parties in bargaining, internal comparability and change in the status quo are three issues forcefully argued by the parties.

Bargaining History

In Oneida County, 28021-A (Malamud, 10/94), the following observation concerning bargaining history appears:

> . . . evidence with regard to what the parties did or did not do in bargaining is properly excluded. Otherwise, the interest arbitration hearing could well turn into a prohibitive practice proceeding. [Footnote omitted.] Such evidence tends to unduly expand the scope of the hearing. It is burdensome to the process. It is on that basis, that evidence relating to alleged agreements reached during the course of bargaining, were excluded from the record. If the Arbitrator were to act as a surrogate, certainly such evidence would be the best evidence of the agreement the parties would have reached had they been left to their own devices.
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> The Arbitrator gives little weight to the give and take reflected in the offers made by the parties in the course of their negotiations and the investigation conducted by a member of the staff of Wisconsin Employment Relations Commission. In this case, the Union alleges that the Employer made a proposal which the Union did not accept. Such evidence is hardly the basis for the selection of one final offer over that of the other.

There are two bargaining history issues that the parties bring to this interest arbitration proceeding. First, the Employer notes that the parties reached a tentative agreement that the Union membership rejected. The Union vigorously objects to the Arbitrator's consideration of the tentative agreement and the exhibits that document it. Employer exhibits 4 documents the tentative agreement reached by the parties. In exhibit 12-Additional, the Employer introduces the updated provisions of the current and Copay plan for 1996. The Arbitrator receives into evidence Employer Exhibit #4. He gives that exhibit the same weight he accords the tentative agreement for the reasons explained below.

With regard to Exhibit 12-Additional, the Union objects because it received the corrected data concerning the current HMO plan in effect in

calendar year 1996, only one day prior to the arbitration hearing. In bargaining, the Union and, as far as the Union knows, the Employer relied upon the information provided in Union exhibit 4 which describes the benefit of the current Physicians Plus plan in effect during the term of the expired agreement. The Union admits that it does not know if the Employer's conduct is the product of omission or commission. The information provided to the Union indicated that the copay for emergency room use was $25 in 1996, when in fact it was $50. It also indicated that the maximum employee outlay for Durable Medical Equipment was 20% of $500, when in fact it was 20% of $1000.

The Arbitrator recognizes the legitimacy of the Union's complaint over the woefully belated provision of information on this important issue. The delay in providing the above information may undermine the validity of this award and/or the entire bargaining process. In the alternative, the outdated information provided to the Union may have had little impact on the bargain. What is clear is that the Arbitrator does not have all the facts concerning this issue. More importantly, the Arbitrator has little authority to fashion a remedy if one were appropriate, if indeed the Municipal Employment Relations Act were violated. The Arbitrator is sensitive to the fact that the party receiving inaccurate information, may be entitled to a remedy that is delayed and has no impact on the arbitration process, while the party providing the inaccurate information is in a position to take full advantage of that information in the arbitration proceeding. The Arbitrator finds that the legislature considered this problem, but nonetheless included in this statutory scheme Section 111.70(4)(cm)6.e. that provides:

> Arbitration proceedings shall not be interrupted or terminated by reason of any prohibitive practice complaint filed by either party at any time.

The legislature did not then empower interest arbitrators to evaluate the parties' bargaining conduct and thereupon issue an interest award that includes a remedy for prohibited conduct in the course of bargaining and an award that is the product of the application of the statutory criteria. What the legislature did, in this Arbitrator's view, is to leave the matter of the enforcement of the bargaining provisions of MERA to the Wisconsin Employment Relations Commission and to the Arbitrator the analysis and

application of the statutory criteria to the final offers certified by the Commission to the Arbitrator. Accordingly, the Arbitrator does not take into account the failure of the Employer to provide the Union with an accurate description of the Physicians Plus Plan in effect during calendar year 1996.

A tentative agreement represents the culmination of the parties' bargaining and give and take. The Union argues that the rejection of a tentative agreement by a principal should not be considered by the Arbitrator. Recently, in Lincoln County (Courthouse), 28751-A (Malamud, 2/97), this Arbitrator addressed the issue of the consideration of tentative agreements rejected by a party's principal. This Arbitrator adopts the approach of Arbitrator Krinsky that he expressed in his award in City of Marshfield (Fire), Case 101, No. 45435, MIA-1611, as follows:

> It is this arbitrator's view that rejected tentative agreements should not be controlling of the outcome of interest arbitration cases. This is because either party's negotiators must have the freedom to attempt to negotiate a tentative agreement, even at the risk that it will be rejected by their constituents. For an arbitrator to decide that a rejected tentative agreement must be implemented through arbitration, without seriously considering other evidence, would have the effect of making negotiators reluctant to take the risk of trying to reach a voluntary agreement, because the price of a rejection would be reviewed as too high.
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> A tentative agreement which has been rejected is entitled to some weight, however, in the arbitrator's opinion. It is one of the things which is appropriately considered under statutory criterion (h), the "other factors" criterion which pertains to other factors normally taken into account in arbitration. The reaching of a tentative agreement is evidence that the negotiators mutually viewed the tentative agreement as a reasonable compromise to their differences. Neither party can then sustain an argument in arbitration to the effect that the terms of the tentative agreement are unreasonable.

The Union attempts through many of its arguments to cast the Employer's final offer as unreasonable. Under Arbitrator Krinsky's analysis,

that effort must be rejected absent evidence that the Union was misled or misunderstood the terms of the tentative agreement; or, events occurred between reaching a tentative agreement but prior to ratification that seriously undermine the basic underpinnings of any agreement.

Here, an officer of the Union testified at the hearing. There is no evidence to suggest that the tentative agreement was rejected based on some misunderstanding, miscalculation or misinformation. The Union's attempt to characterize the Employer's final offer as unreasonable is rejected by this Arbitrator.

In DeSoto School District, the Arbitrator ignored the Employer's rejection of a tentative agreement. That case was decided under a different statutory scheme. In that case, the Arbitrator served as the mediator. It is that agreement mediated by the Arbitrator that was rejected by the Employer. It is in that context that this Arbitrator observed that the statute does not provide a penalty for rejection of a tentative agreement. This Arbitrator's view of how tentative agreements are to be treated is set forth in Lincoln County, supra.

It is the Union's characterization of the Employer's final offer as unreasonable that elevates the importance of the tentative agreement. It raises the inquiry why the Union tentatively agreed to a $15 office visit fee that violates public policy or to an Employer offer that provides either no or an inadequate quid pro quo for the proposed change? This unanswered question is **not** determinative of the analysis under this criterion, but it provides some support for the inclusion of the Employer's final offer in the successor agreement.

Internal Comparability

This is a small employer. It has two units of employees that are organized, this unit of DPW and Village Hall employees and a police unit. All other employees are nonrepresented. The nonrepresented employees of the Village were placed under the Physicians Plus Copay Plan some time during 1994-95 (Employer Exhibit #16). In an agreement effective January 1, 1996 that provided for the implementation of the Physicians Plus Copay

Plan in April 1996, the police unit voluntarily agreed to participate in the Copay Plan. Only this unit is not subject to the Copay Plan.

The Union notes that the nonrepresented employees had no choice. The Employer imposed this benefit upon them.

The Union's argument is well taken. However, in Lincoln County, supra, this Arbitrator gave considerable weight to an employer's failure to impose on nonrepresented employees a benefit that it asked the Arbitrator to impose through an interest arbitration award. The Village of DeForest does not attempt to plow new ground through an interest award and only then implement that award for other represented units of employees and nonrepresented employees.

The Union argues that police officers receive substantially higher pay than the employees in this unit. The Employer responds to this argument by noting that the higher wage paid to police officers reflects the hazards of that occupation. Nonetheless, employers frequently attempt to offer the same level of health insurance to all its employees.

The Union counters that argument by listing the many differences in benefits offered to police officers and employees in this unit. Many of those differences stem from the different pension and retirement ages imposed by statute. Others reflect the concern of employees in each unit with different benefits (Village of Little Chute, 27067-A (Mueller, 3/92)). Health insurance protection is an important benefit for all categories of employees. Arbitrators recognize the importance of the ease of administration that results when one health insurance program is in effect for all employees.

In the case of a small employer, one unit should not be in a position to determine the fringe benefits of another unit. This note of caution applies particularly in the case of a small employer, where all the employees of the Employer fall into one unit or the other, or are not represented. Ordinarily, internal comparability carries substantial weight in the identification of the preferred final offer. The Arbitrator finds this portion of the Such other factors criterion supports the selection of the Employer's offer. However, in light of the small size of this Employer, the Arbitrator does not give as much

weight to this criterion, even though a pattern of settlement has emerged covering most of the employes of this employer.

Status Quo

The Employer correctly notes that this Arbitrator employs a three-pronged analytical framework in a case in which a party proposes to change the status quo. The party proposing the change must demonstrate a need for it, and the proponent of change must provide a quid pro quo for the change. The Arbitrator must be convinced by the evidence presented by the proponent of change that indeed there is a need and a quid pro quo has been provided, Greendale School District, 25499-A (Malamud, 1/89). In Greendale, this Arbitrator recognized that an employer's attempt to obtain consistent benefits among its various employee groups constitutes a need for a change. Although this is a small employer, it attempts to have one plan in effect for all its employees. It first put that plan in effect for those employees over whom it exercises maximum control - the nonrepresented. The one other bargaining unit of this Employer, the police unit, voluntarily accepted the Physicians Plus Copay Plan.

The Employer argues that it provides a quid pro quo for the change in insurance plan. It offered a $60 lump sum payment for the change.

The Union notes that the Employer saves $547.08, and in exchange it offers employees $60. It argues that this quid pro quo is not adequate.

The Employer continues its argument that its quid pro quo is adequate. It notes that these employees received a larger wage increase than any other group of employees. It notes that the police unit received 2.5% and 3% increases for calendar years 1996 and 1997.[2] The Employer notes that the employees in this unit will obtain an 8% lift in wage rates after all increases are put into effect by July 1, 1997.

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[2]The police unit will receive a 3% increase in the third year of that Agreement, calendar year 1998. In addition, in calendar year 1996, the Employer agreed to an additional 2% step after five years of service, and another 2% step after 10 years of service.

The Union counters. Employees of the Village are paid the lowest wage rates among the comparables. Although the Arbitrator rejects many of the comparables proposed by the Union, when comparing the wage rates of DeForest employees to those comparables accepted by the Arbitrator and for which data was provided, the Union has established that the wage rates for employees in the various classifications in this unit are below average.

This is not a wage dispute. Wages only become an issue in the context of whether an adequate quid pro quo was provided for the change in insurance plans. The change proposed will expose bargaining unit employees to small payments for office visits under limited circumstances. The savings generated for the Employer is substantial. However, the wage lift that employees will receive is substantial, as well. The Arbitrator concludes that the Employer has provided sufficient evidence to establish that there is a need for a change and that it has provided a quid pro quo for that change. The Employer attempts to achieve consistency of health insurance benefits for all its employees through its proposal. It offers not only the $60 lump sum payment but a wage lift far in excess of the wage lift it offered the police unit.

Conclusion: j. Such Other Factors and b. Stipulations of the Parties

The three elements of this criterion, the tentative agreement, internal comparability and the change in the status quo, all support the adoption of the Employer's final offer. Accordingly, the Arbitrator concludes that this criterion provides substantial support for the selection of the Employer's final offer.

VACATION

The Union notes that the health insurance issue is far more significant than the vacation issue. The Arbitrator agrees. The dispute over the introduction of additional language in the vacation conversion section of the Agreement raises an issue that is more susceptible to resolution through rights rather than interest arbitration. The amendment proposed by the Union would not inject ambiguity into the agreement.

The Union disagrees with the Employer's interpretation of the conversion language. Employees would suffer as a result of the Employer's administration of the vacation language through the loss or delay in receipt of contractual vacation benefits. This raises a question of interpretation of the language of the expired agreement. The Arbitrator concludes that the application of the statutory criteria to this particular issue does not serve to favor one final offer over that of the other.

SELECTION OF THE FINAL OFFER

The Arbitrator has considered the other statutory criteria, principally overall compensation, cost of living and changes in the foregoing. The parties presented some arguments relative to these criteria. The Arbitrator addressed some of the arguments presented concerning the criterion changes in the foregoing in the discussion of bargaining history. The other two criteria do not serve to distinguish between the final offers of these parties.

In analyzing the application of the Interest and Welfare of the Public criterion, both the Union and the Employer develop substantial evidence that is supportive of their respective final offers. Even though the evidence presented by the Union concerned the unusual character of the Physicians Plus Copay Plan as an HMO provider, the Employer presented evidence on a different point. It established the substantial savings it would experience and at the same time maintain the broad spectrum of benefits afforded by the current Physicians Plus plan. Although each presented different evidence concerning different aspects of its criterion, the Arbitrator finds that the evidence of one offsets that of the other. Consequently, the Arbitrator concludes that this balance does not favor the selection of either the Union or the Employer final offer.

The Legislature's statutory direction to the Arbitrator as to which factors should be given the greatest weight and those that should receive greater weight played no part in the decision making process. Neither party presented any argument as to the application of these legislative directives to the particular issues in dispute, here.

The comparability criterion provides support for the adoption of the Union's final offer. In this case, the Arbitrator discussed three elements of the Such Other Factors criterion, namely, the tentative agreement, internal comparability and the change to the status quo. Although none of the three elements of this criterion is accorded determinative weight, together the three elements combine to provide substantial support for the selection of the Employer's final offer.

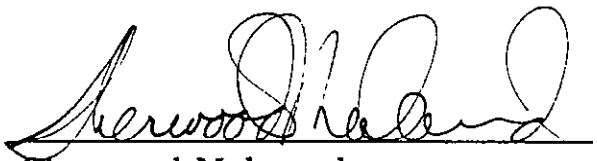
Both final offers are reasonable. As noted above, the application of the statutory criteria to the vacation issue neither favors the Employer's nor the Union's final offer. On the basis of the application of the statutory criteria to the issues in dispute, here, the Arbitrator concludes that the "Such other factors" criterion outweighs the comparability criterion. Accordingly, the Arbitrator selects the Employer's final offer for inclusion in the successor Agreement.

Based on the above discussion, the Arbitrator issues the following:

AWARD

Upon the application of the statutory criteria found at Sec. 111.70(4)(cm)7, 7g., and 7r. a.-j., Wis. Stats., and upon consideration of the evidence and arguments presented by the parties and for the reasons discussed above, the Arbitrator selects the final offer of the Village of DeForest for inclusion in the agreement for calendar years 1996 and 1997 between Local 60 (Village of DeForest Unit), WCCME, AFSCME, AFL-CIO and the Village of DeForest.

Dated at Madison, Wisconsin, this 17th day of March, 1997.



Sherwood Malamud
Arbitrator