STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of the
Dispute Between the

**Wisconsin Dells City Employees' Union Local 1401,
WI Council 40, AFSCME, AFL-CIO**
and
the City of Wisconsin Dells

WERC Case 32
No. 55414
INT/ARB 8208
Decision No. 29321-A

Appearances:

Mr. David White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO for the Union. Mr. James P. Gerlach, City Attorney, City of Wisconsin Dells, for the Employer.

Sworn Testimony was received from:

Mr. Chris Bruni, Account Executive, Unity Health Plans
Mr. Craig Casey, Mayor, City of Wisconsin Dells
Mr. Daniel J. Gavinski, Alderman, City of Wisconsin Dells
Mr. Scott Holzem, President, Wisconsin Dells City Employees' Union Local 1401

Background

On December 3, 1996, representatives of the City of Wisconsin Dells (hereinafter referred to as the "City" or the "Employer") and Local 1401, Wisconsin Council 40, AFSCME, AFL-CIO (hereinafter referred to as the "Union" or the "Employees") exchanged proposals on economic issues to be included in a successor agreement (for the years 1997 and 1998) to their agreement which expired December 31, 1996. The Union represents all employees of the City, excluding supervisory and managerial, confidential, and law enforcement employees. The Parties met on four other occasions and failed to reach an agreement. On July 30, 1997 the Union filed a petition with the Wisconsin Employment Relations Commission for final and binding interest arbitration pursuant to Section 111.70(4)(cm)6 Wis. Stats. Investigator Thomas Yaeger, a member of the Commission's staff, conducted an investigation on October 7, 1997 and then advised the Commission that an impasse existed. The parties submitted final offers to the Commission by February 27, 1998. On March 10, 1998 the Commission certified the parties' final offers and directed them to select an impartial arbitrator. The Undersigned, Richard Tyson, was selected and appointed on April 6, 1998. He conducted a hearing on the matter on June 10, 1998 at the City Hall, 300 La Crosse St, Wisconsin Dells, Wisconsin. No transcript of the hearing was taken.

Both parties had an opportunity to present exhibits and testimony and to outline their arguments in this dispute. They agreed to a schedule for exchanging briefs and replies, the last of which was received on August 14, 1998.

The Issue(s)

Several issues were resolved in the bargaining process; only one item remains in contention. The City proposes that the health insurance plan (Unity Plus HMO) be modified from the "FA" plan to the newer "FF" plan which purportedly is the more standard product of Unity Health Services. The more significant plan changes include a prescription co-pay differential of $10 for brand-name drugs (vs. $5 for generic), a 20% durable medical supply co-pay (paid by the Employer, however), a $25 emergency care co-pay (the Employer would pay for 2/yr), therapy, skilled nursing, and home care coverage limitations, and dropped coverage for certain implants and treatments.

Two ancillary issues are raised by the parties. One issue relates to which is the most appropriate set of comparables to use under Sec. 7 r. (d) and (e) below? The other issue relates to whether or not a moving party must offer a quid pro quo for a proposed change in the status quo in order to prevail in interest arbitration. Both parties would use Baraboo, Lake Delton, Portage, Prairie du Sac, Reedsburg, Richland Center, and Sauk City as comparables. The Union would add Lodi; the Employer would add Dodgeville, Sparta, Tomah, Adams and Mauston. The Employer also would consider secondary comparables of Edgerton, Prairie du Chien, Richland Center, and Stoughton, and give tertiary consideration to Eagle River, Tomahawk, and Minocqua on the theory that the latter are similar tourist destinations.

On the matter of the change in the status quo, the Union contends that the Employer must, but does not in its offer, provide a quid pro quo for taking away current benefits. This is particularly the case when there is no clear pattern of evidence from other settlements; moreover "settlements" of other employees who do not have the same collective bargaining rights are not appropriate comparisons. The Employer contends that there has been a "paradigm shift" away from the requirement of a quid pro quo when the status quo change sought is to bring employee benefits and practices into the prevailing pattern.

Cost Costing of the proposals during the 6/1988-89 is as follows:

	"FA" ("old")		"FF" ("new")		
	#	Mo. Premium	Mo. Premium	difference	cost/year
Single	8	$ 195.88	$ 185.64	$ 10.24/mo.	$ 983.04
Family	15	$ 519.07	$ 491.94	$ 27.13/mo.	$4,883.40
		Total cost/yr.			$5,866.44

The Statutory Criteria

The parties[1] have directed their evidence and arguments to the statutory criteria of Sec. 111.70 (7) Wis. Stats. which directs the Arbitrator to consider and give weight to certain factors when making his decision. Those factors 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.

7. g. '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 under subd. 7r.

7. r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give weight to the following factors:

a. The lawful authority of the employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services.

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[1]The Employer directed the Arbitrator to the "old" criteria, listed above as "other factors..."

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

f. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees generally 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 employees, 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, factfinding, arbitration or otherwise between the parties, in the public service or in private employment.

Arguments of the Parties

The Employer

The Employer described the difference between the offers, the new and the old health plans as "minuscule."[2] Very few employees will be adversely impacted under the more modern plan which Unity "now markets to all communities." The City, however will benefit by having all of its

[2]Employer Brief, p. 4

employees under the same plan. While the Union may argue that the Employer is changing the status quo without receiving a quid pro quo, little change is occurring. Even if one concluded that there is a change, it is only a change to bring unit employees into the mainstream of health care plans. Other local public employees and the internal and the external pattern of settlements demonstrate this to be the case. By moving to the prevailing pattern, the need for a quid pro quo is obviated. The Union's reliance on quid pro quo for all status quo changes is outdated; in this case the Union is simply trying to shake down the City when it seeks a necessary change. The change is needed because the City is getting a break from Unity in the form of a 5% cap on premium increases as Unity gets the old plan off the books; it is therefore better able to control its employees' health care costs--a change which is self-evidently needed.

The City contends that it is proposing minimal changes in the plan which has been adopted by the Police unit and administrative employees. It is the standard plan marketed by Unity, an HMO serving 400 different entities in central Wisconsin. Employees still would pay $5 for prescriptions unless they choose brand name drugs over generics. The 20% co-pay for medical equipment is standard, but in this case, the City would self-insure to cover the employees' contribution. Similarly the use of emergency care not followed by hospital admission usually requires a co-pay ($25 in this case) but the City would pay for 2 per year. Skilled nursing care would be capped at 90 days per confinement instead of being unlimited; therapy would be covered for 40 visits/year instead of for 3 consecutive months; and home care visits would be limited to 50/year. Unit employees' use of these services have ranged from 0 to .02 visits per member per month; in other words, were the new plan implemented at the contract's renewal date, no unit member would have paid anything for these services. Similarly, the elimination of payments for penile and cochlear implants would not affect any employee. The only change affecting employees would be the brand name drug co-pay, which would be less than most plans. The current plan which has no differentiation of co-payments for brand name drugs is an anomaly. There is little difference in plans from the employees' perspective; the cost to the City is $0.122 or about 1% of the hourly wage rate of unit employees.

The City has attempted to modernize its health care plan for some time so as to better control rising costs. The plan provider has given the City a 5% cap on costs if it can move its old plans "off the books". The Police unit agreed to do so, under a 3-year agreement which provided wage increases of 2/2%, 3%, and 3%. The same was offered this unit to no avail. The first year lift of 2/2% was in exchange for a 3-year duration. The Administrative employees have also been

enrolled in the new plan, leaving this unit as the lone holdout. Recognizing that the Union would argue that the prevailing pattern is not established because the Police unit cannot under law seek arbitration and therefore "knuckled under," the City asserts that it has always bargained in good faith and has agreed to the mediation and arbitration of disputes with the police, and has not held the lack of full bargaining rights over the head of the police unit to secure a favorable settlement. The City, for instance, could have forced the police into the plan in the prior contract but did not.

The City is confounded by the Union's disputing the issue. When its representatives met with employees on contract issues, little was said about the health care plan; there appeared to be agreement. Instead, the Union seemed focused on the Employer's proposal for a lower wage rate for new hires. There was no agreement on that matter, so when it was dropped, there should have been agreement on remaining issues. Essentially the Union is trying to exact a better health care policy than other employees and/or "trying to extract a more costly package."[3]

The Union's offer is out of line with other, comparable employees. While it is true that school district employees only have a $2 drug co-pay (without differentiation), those employees pay 15% of the premium, which is equal to 10 brand name or 26 generic co-payments (family coverage) per month! Employees in the primary, secondary, and the tertiary comparables have less generous health care plans as well. A $25 or greater co-pay for emergency room care (without hospital admission) is prevalent, as is a 20% durable medical equipment payment. With the City's self-insurance of these, the Employer's proposal clearly makes unit employees' care superior. Many have yearly deductibles for ordinary services. Most differentiate between co-payments for generic and brand name prescription drugs. The other changes in coverage proposed by the Employer similarly bring unit employees into line with health care provided by comparable employers.

The Union inaccurately contends that the Employer is changing the status quo and must make a quid pro quo in doing so. Very little change is being proposed, and little (if any) costs will be incurred by employees. A need for the modification exists. The insurer is "clearing its books" of old policies and will limit rate increases in exchange. While only required to show "need" or "comparisons" to justify a status quo change without a quid pro quo, the City has shown both. The change will result in all city employees having the same health care coverage, as has historically been the case. Citing Arbitrator Kerkman, internal consistency in benefits is to be

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[3]Employer Brief, p. 16.

given great weight.[4] While it is true that some of the fringe benefits of the Police appear better than unit employees, there are valid reasons for the differences in addition to the fact that the police are paid less. The administrative employees also have the more modern plan, leaving only Local 1401 employees with the old plan. External comparisons -whether using the Union's or City's comparables--also show that the Employer's offer is the more mainstream health plan. The dropped implant coverage are generally not covered elsewhere. Emergency care co-payments is the rule as are limitations on nursing and home care. The Employer's offer even leaves employees in a relatively better position since the comparables' do not generally self-insure for the co-payments for emergency care and medical equipment. Additionally, City employees enjoy longevity pay better than the "richest of the rich" comparables.[5] Since the Employer's offer only seeks to bring employees into the comparable mainstream, "there is no requirement of a quid pro quo."[6]

In sum, the City needs to be consistent with all of its employees, particularly with regard to health care benefits. Arbitral authority supports internal consistency, particularly with regard to fringe benefits.[7] The costs of these benefits can be better controlled by the new plan. The plan provides the employees with the same basic benefits at lower costs to the Employer. Since there is no real change, there is therefore no need for a quid pro quo for its health care offer. In addition, comparisons with the comparables shows that the Employer's offer only brings the AFSCME unit employees into the mainstream, again, obviating any requirement for a quid pro quo. The Union's refusal to adopt the more modern plan is unjustified, and attempts to get more than afforded other employees.

The Union

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[4] Village of Shorewood, Dec. No. 26625-A (July, 1991)

[5]Employer Reply Brief, p. 15.

[6]Quoting Arbitrator Weisberger in Bristol School District No. 1, (Dec. No. 46794), October, 1993

[7]Citing Arbitrator Rice in Walworth County Handicapped Children's Education Board, (Dec. No. 27422-A), May, 1993, Arbitrator Kerkman in Village of Shorewood,)Dec. No. 26625-A), July 1991, Arbitrator McAlpin in City of Oshkosh (Police), (Dec. Nos. 28284-A and 28285-A), Nov. 1995, and others.

The Union contends that the Employer is attempting to take away benefits through the arbitration process without any compensation in the form of a quid pro quo. The City's assertion that it is not taking away from the employees is absurd. There is no "internal pattern" nor is there a clear pattern of support among the comparables for the Employer's "take-back". And contrary to the City's assertion, the concept of a requirement for a quid pro quo is not dead. The City knows this, and gave an extra 1% lift to the Police in compensation for the "new" health plan. It has not offered to compensate the AFSCME unit–indeed the 3% wage increase which the parties are both proposing is among the lowest of the comparables. There also is no evidence of compelling need for the status quo change; Wisconsin Dells' premiums are similar to those of the comparables, and the rate of increase has been less.

The City insists that it is not taking away benefits from the employees, and that its proposals are minuscule. If this were the case, there wouldn't be any differences in premiums–but there is a reduction for the Employer, and an adverse impact on employees. While Mr. Bruni of Unity testified that employees had little if any claims for skilled nursing, etc. which would be lost or restricted, this doesn't mean that the insurance is of no value; the Employer's offer simply shifts the burden of risk to employees. The co-payment differential for brand name drugs also has an adverse impact for at least two reasons: new drugs have no generic equivalents, and there are differences in the bioactivity of generic and brand name drugs. Employees simply will have to pay more for their health care, and will get less.

The Employer's wrongly contends that there is an "internal pattern" of acceptance of the new plan, and that the AFSCME unit is a "hold out." The Police unit "settled" for the new plan, but it represents only 11 employees while there are 23 members of the AFSCME unit, and they cannot seek arbitration. Additionally, the administrative unit's enrollment in the new plan was unilaterally determined. Citing Arbitrators Coughlin, Vernon, Krinsky, Kessler, Rice, Malamud, and Johnson, the Union contends that under such conditions, a pattern is not established.[8] The Union noted that in the cases cited by the Employer, the union was a hold out where a clear majority

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[8]City of Eau Claire (Department of Public Works), (Dec. No. 28542-A); Edgerton School District, (Dec. No. 25933-A), Nov. 1989 and Lake Geneva School District No. 1, (Dec. No. 26826-A), Feb. 1992; City of Marshfield, (Dec. No. 27039-A); Webster School District, (Dec. No. 23333-A), Nov. 1986; Desoto School District, (Dec. No. 16814-A), Aug. 1979; West Allis-West Milwaukee School District, (Dec. No. 21700-A), Jan. 1985; and Potosi School District, (Dec. No. 19997-A), April 1983, respectively.

of an employer's units had agreed to a particular item through the give and take of the barg aining process. Such is not the case in this matter; moreover, the police unit does not have access to arbitration in the event of an interest dispute with the City of Wisconsin Dells since the City has a population under 2,500. Arbitrator Slavney, in a very similar situation, opined that such a "settlement" should not weigh in the Employer's favor.[9] The City's assertion that it has never held that fact over the heads of the Police unit, and has in the past agreed to submit to the mediation-arbitration process is "demonstrably false".[10] The WERC records show that the City has never arbitrated a dispute with the Police. The City's evidence that it has bargained in good faith with the Police unit because it could have forced the insurance change during the prior contract negotiations is also wrong; the AFCME unit (2/3 of the unionized workforce) settled first without the changes sought by the employer.

The Union contends that there is no clear pattern of support among the comparables for the Employer's proposal. There is some disagreement as to the comparables. The Union has proposed geographically proximate employers–employers in the same county as Wisconsin Dells primarily Columbia and Sauk). The Employer seeks to add cities "so far from Wisconsin Dells that none could possibly be considered to share a common labor market or 'bread basket' with Wisconsin Dells."[11] Among primary comparables, there is agreement with the exception of Lodi, Adams, and Mauston. Lodi's population is the same as Wisconsin Dells; its income and full value is "in the same league". On the other hand, Adams' population is at the low end of the agr eed on comparables while its income (AGI per Return) and property valuation is far outside the range. Mauston's population is in the range, but its income is $2,000 below the lowest of the agreed on comparables, and its valuation $15 million below, and less than half the average.

The Arbitrator is cautioned not to compare single elements of health insurance plans since they are "profoundly complicated and difficult to compare."[12] Arbitrators are more likely to compare gross feature, premiums, and plan types. Using the Employer's comparables, of the 18 plans, 13 are managed care. The existing Unity plan single premium is 13th while the family plan premium

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[9]Village of Butler, (Dec. No. 26501-A).

[10]Union Reply Brief, p. 11.

[11]Union Brief, p. 6.

[12]Union Reply Brief, p. 15.

is 9th. The Employer's attempted comparisons to show that the existing plan is excessively generous misrepresents the facts. The plan's payment for out of network co-insurance is really 0%, not 100% as implied, and therefore is among the worst plans. The City indicates that the plans for many of the comparables includes many deductibles and co-pays but neglects to tell the Undersigned that those are often reimbursed by the employers. The outpatient and home services limitations would also be inferior to the comparables under the Employer's offer. Several employers have the State Plan and other plans requiring co-pays and differentials for brand name drugs, but these have caps (eg. $130/260 for the State Plan); the proposed plan has no caps. If the Employer's offer were accepted, City of Wisconsin Dells employees would have "the worst drug co-pay arrangement" of the City's comparables.[13]

The City's wrongly asserts that there has been a "paradigm shift" away from concept of a requirement for a quid pro quo. In fact, it has misread the cases it has cited in support of this assertion and/or has taken quotes out of context. In Glenwood City, Arbitrator Zeidler would certainly not require the Employer to provide a quid pro quo when it had proposed a benefit increase![14] In Maple Dale-Indian Hills, Arbitrator Stern did not reject the principle of a quid pro quo when there was a uniform tide in favor of the Employer's offer.[15] In other cases cited by the Employer, the arbitrators were faced with circumstances where both sides had proposed status quo changes, or a quid pro quo was found to be adequate. Arbitrators are reluctant to change the status quo when the parties have negotiated the items in their agreement; rather when an impasse exists, they will consider arbitration as an extension of the bargaining process to achieve what the parties would have or should have agreed to. If a change would not have been agreeable, they will be reluctant to award what a moving party could not have attained at the bargaining table. If a need for a change can be established by clear and convincing evidence and an adequate quid pro quo is offered, only then will they render such an award.[16] Here, there is no clear, convincing evidence of a pattern towards acceptance of the Employer's proposal. Only one unit representing

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[13]Union Reply Brief, p. 17.

[14]Dec. No. 26944-A.

[15]Dec. No. 27400-A.

[16]Citing Arbitrators Christenson, in Menomonee Falls School District (Dec. No. 24142-A), July, 1987, Petrie, in Twin Lakes School District (Dec. No. 26592-A), March, 1991, and Malamud in D. C. Everest School District (Dec. No. 24678-A), Feb. 1988.

1/3 of bargaining unit employees accepted it while this unit representing 2/3 have not. Under such circumstances where there are as few as two units arbitrators have not compelled one u nit's terms to be determined by the other unit's settlement, especially if it represented a minority. [17]

The City gave an extra 1% lift (a 2%/2% first year wage settlement) to the Police in compensation for the "new" health plan, so it understands the need for an adequate quid pro quo. The Employer contends that police received this lift in exchange for a 3-year contract. There is no evidence of this. There is also no evidence that the three City units have always had the same insurance plans. There is also no evidence that the Police accepted the "new" plan because it recognized that the old one was "outdated," nor is there evidence that the AFSCME unit members considered the insurance matter a "non-issue" in the negotiation process or that it was acceptable but now the union has "backtracked."

The City asserts that it has offered the AFSCME unit the same as the Police; if it did have a 2/2% offer on the table, it also had a $3 wage cut for new employees in the deal. Certainly the City has not offered to compensate for the take-aways in the insurance by its 3%/3% wage increase it is proposing since it's offer is among the lowest of the comparables. Lake Delton employees will receive $.48 and $.53 (3.8-5.6%) increases in 1997 and 1998. Lodi employees will receive 3.5% and 1%+ a new longevity plan. Portage workers will receive $.45 and $.50 (3.-4.5%). The increases are 4-6% and 5% for Reedsburg utility employees and $.60-1.00 each year for other employees. Richland Center DPW employees will only receive 3% and 3%. The utility employees will receive 2.6 -10.1% and 3%. Sauk City employees will get $.44 ATB. Wisconsin Dells employees will only receive 3% and 3% or $.41 and $.42. Since the offer is the lowest of the comparables, it cannot contain a quid pro quo.

There also is no evidence of compelling need for the status quo change; Wisconsin Dells' premiums are similar to those of the comparables, and the rate of increase has been less. Insurance premiums rose only 2.5% in 1997 and only 5% in 1998. Five of the seven comparable s had greater increases in 1997, and the 1998 increases were among the lowest. The City's family plan monthly premium is less than $16 above average, while the single premium is $6 below. Actually, since the Wisconsin Dells' rates are June to June rates, the comparables' rates should

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[17]Arbitrator Mueller in Village of Little Chute (Dept. of Public Works), (Dec. Nol. 27067-A), and Arbitrator Malamud in Village of DeForest, (Dec. No. 28784-A).

be adjusted upwards by ½ the 1999 increases.

In sum, the City in its offer is simply trying to take away a benefit without compensation. It cannot show a compelling need to do so, nor can it show a clear pattern of support for its offer.

Discussion and Opinion

The Statute requires the Arbitrator to consider the aforementioned criteria in making an award. Neither the Union nor the Employer indicated that state laws or directives limit the Employer's ability to pay the Union's offer. The parties also did not address the issue of whether economic conditions in Wisconsin Dells are relatively better or worse than in the surrounding, comparable communities. The criteria cited by the Parties as pertinent to this decision are the interests and welfare of the public (c), the internal and external (e. and d.) comparisons as well other factors--status quo change (j), and overall compensation (h.). Each of these is considered below as the outstanding issues of this dispute have been considered by the Arbitrator. First, the Arbitrator would comment on the question of the status quo and related matters to which the parties gave considerable attention. The internal and external comparability factors are then addressed, followed by a discussion of other factors and of other issues.

Other factors: Status quo

The Arbitrator recognizes that the City proposes a modest change in the parties' health insurance provisions. It represents perhaps ½% + of a City employee's wages and is debatably "minuscule" as contended by the Employer. The premium differences between the old and new plans are said to be the equivalent of about $ .122/hour or 1% of unit employees' pay, according to the Employer[18]. Mr. Bruni of Unity indicated that about 48% of the average $23/mo. is savings from having employees pay more for brand-name drugs, which may be in some part avoidable. About 30-35% is due to changes in the emergency room provision (though this seems high for the 8 visits/yr.) which will be largely covered by the Employer, and the rest is due to the other service reductions or increased risk assumption by the City and individual employees.

At the same time the arbitrator appreciates the substantial increases in health care costs which has occurred across the state and nation and the need to reduce the growth rates of health care costs

[18]Employer Exhibit 28.

which are at an astounding 14% of GDP. Perhaps the most significant aspect of the City's proposed change in the plan is the dual co-payment for pharmaceuticals. The Undersigned is in principal favorably disposed towards such a provision because of its potential to encourage more economical provision of health care services when an employee is confronted with the choice between brand-name and equivalent, generic drugs. He is, however, mindful of the fact that equivalent, generic drugs are not always available for an employee to choose, and in those cases, the City's proposed change on this provision is merely a pay cut in real wages. It would seem likely that Unity would and could document the extent to which employees deliberately choose brand name drugs when generics are available, were this to be the main cause of the premium differential between single and dual drug co-payment plans. In that event, opportunities for "gain-sharing" of savings would be feasible in order to get employees to "buy into" the plan. If little use of generic drugs were possible, though, the provision proposed by the Employer simply cuts average wages by about $11/mo. Supposing the remaining 20% (48% for drug co-pay, about 32% for E/R co-pay) to be evenly divided between the increased risk assumption/service reduction by employees and the City, the "new" plan may cost employees and additional $2.30 or so (less insurance company overhead and profits). The Arbitrator is inclined to agree with the Union that despite the fact that unit employees used little or none of the home care, skilled nursing, or therapy benefits which are more limited under the Employer's proposal, their being priced by Unity suggests that they have actuarial (if not realized) value.

Arbitral authority and practice would indicate that the County must present a compelling case for its proposal, that its proposal is a remedy or has intrinsic merit, and that it generally would need to offer an adequate quid pro quo, unless its offer has clear support such as among the comparables.[19] The argument has been made numerous times by this and other arbitrators that provisions which the parties have agreed to are best left to the parties to change if at all possible, and that interest arbitration serves as an extension of the bargaining process. As such, the arbitrator seeks a settlement of disputed matters which the parties would have arrived at were they

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[19]see Vernon in Elkhart Lake and Bloomer School District (Dec. No. 43193-A and 24342-A), Nielson in Manitowoc Public Schools, (Dec. No. 26263-A), Petrie, in New Richmond School District, and more recently Petrie, in Burnett County (Social Service Employees) (Dec. No. 54837), Aug. 1998 where he writes:

> "..Wisconsin Interest Arbitrators normally require the proponent of change to establish a very persuasive basis for such a change, typically by showing that a legitimate problem exists which requires attention, that the disputed proposal reasonably addresses the problem, and that the proposed change is accompanied by an appropriate *quid pro quo*." (p. 28)

to have been able to resolve the matters themselves. A change in the status quo without a good and compelling reason and without some measure of adequate compensation for a resulting loss or adverse effects would not be a likely result of a voluntary settlement. Such a change gained through the arbitration process may chill the future bargaining process and is therefore to be avoided.

There are two ways which the Undersigned may frame the dispute. Does the dispute rise to the level of a status quo change in some fundamental policy established through the collective bargaining mechanism for which there is or is not a compelling reason or adequate or inadequate quid pro quo? Or in the alternative, which of the offers, varying by a "minuscule" $13 or so per month per employee, is to be preferred under the statute?

The Undersigned believes that there may be some intrinsic merit in the Board's proposal to change the status quo by encouraging use of equivalent, generic drugs and discouraging unnecessary use of emergency room visits which would seem to have the effect of reigning in health care costs.[20] Other provisions could be introduced to further increase incentives to economize on the use of health care services and thereby reduce costs. The parties already use managed care (in this case, Unity) which appears to have resulted in plan costs considerably lower than fee-for-service plans. While lowering premiums, these provisions by design generally impose costs on plan enrollees in order to induce more considered use of health care resources, whether in the form of co-pays, limits to services, or restrictions of choice in health care providers. No pain, no gain. In doing so, plans trade a measure of equity for efficiency and vice versa. Ideally, efficiency gains from health care economizing provisions can be equitably shared to compensate enrollees for their losses.

The comparable employers have a variety of health care provisions with more or less restrictions/cost-saving incentives.[21] The Employer contends that by its proposal, unit employees will be brought into the mainstream of health care plans, which would not require a compensatory quid even if the proposal is to be considered a status quo change. The Undersigned does not agree in this case. The dual drug co-pay as a concept is most common, but is one of a variety of provisions for health care and its apportionment of costs between employer and employee. At $5

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[20]two visits/year of Emergency Room co-pay is paid by the Employer under its offer.

[21]Employer Exhibits 33-38, Union Exhibits 15-34.

generic and $10 brand name, the co-pay would be the highest of all the Employer's comparables. Moreover, most of the plans cited by the Employer in which comparable employer's employees are enrolled are on the uniform benefits list for the State Plan and therefore include a "stop loss" limitation provision for drug-co-payments of $130/260 per year. Similarly, the Employer's proposals for limitations on home and skilled nursing care and for therapy (while actuarially of smaller importance) go beyond the mainstream of either parties' comparables plans.

If the Employer's proposals, particularly the dual drug co-pay and benefits restrictions, are to be considered a status quo change, can a compelling need for the change be found? The City maintains that the need to reign in health care costs is self-evident as the City needs to be able to provide services in an economical manner. The Arbitrator would agree but not find the argument by itself to compel an award in the City's favor. The City also argues that a need exists because it was able to cut a "deal" with Unity to limit the cost increase of its plan to 5% if it could get the "old" plan "off the books." While that issue is a matter between the City and Unity, the Arbitrator notes that the health care component of the CPI only rose 2.9% during the June-June 1996-97 period and 3.2 % in 1997-98. Is the City's bill for health care costs excessive vis a vis comparable employers? The answer appears to be "no." Wisconsin Dells' monthly insurance premiums for the "old" plan (the Union's offer) are $195.88/$519.07 (S/F) compared to an average of $201.92/$503.37 for the Union's comparables. Seven of the 23 unit employees have the single plan, implying a weighted average $9.30/mo. or 2.3% higher premium. Since the Wisconsin Dells premium anniversary date is June 1 and the rate increases were 5% for the City, it would not be unreasonable to infer that the City's premiums were pretty similar to the comparables'(which tend to have calendar anniversaries). Wisconsin Dells' rates are lower than the Employer's Group 1 comparables which were $227/$529/mo., and the Group 3 comparables, which were $240/$632. Its Group 2 employer's paid somewhat less ($194/$481).[22]

If the Employer's proposals, particularly the dual drug co-pay and benefits restrictions, are to be considered a status quo change, and absent clear support among comparables (in terms of premiums), is there some evidence of compensation for the change to be found? The parties' wage offers are identical. This is not to say that because these offers are the same, a quid pro quo is not offered, since the Employer's offer may exceed the prevailing pattern by a sufficient amount on other matters to compensate for the loss of the status quo while the Union has simply asked

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[22]Employer Exhibit 33.

for too much. The answer to this lies in an examination of the other question "which of the offers, varying by a "minuscule" $13 or so per month per employee, is to be preferred internal and external comparables and other factors?"

Internal and External comparables and other factors and issues

The parties have not argued their respective cases on the basis of the "greatest" weight factor. Neither have the parties argued with respect to the "greater weight" factor, the economic conditions of Wisconsin Dells. The Union notes that the City has a higher Adjusted Gross Income level per return than the average agreed upon comparable. This would suggest that total compensation of Wisconsin Dells' employees may not be out of line if somewhat higher than the external comparables.

Whether or not either party's offer is to be preferred or whether the Employer has provided *adequate compensation for the reduction of health care benefits (albeit modest) depends in part* on settlements of comparable employers (neither party has attempted to compare wage levels, perhaps because of the difficulty of the task). Both parties would use Baraboo, Lake Delton, Portage, Prairie du Sac, Reedsburg, Richland Center, and Sauk City as comparables. The Union would add Lodi; the Employer would add Dodgeville, Sparta, Tomah, Adams and Mauston. The Employer also would consider secondary comparables of Edgerton, Prairie du Chien, Richland Center, and Stoughton, and give tertiary consideration to Eagle River, Tomahawk, and Minocqua on the theory that the latter are similar tourist destinations. The Arbitrator would consider eight agreeable comparables, including Wisconsin Dells, as sufficient for determining the general pattern of settlements. Lodi and Mauston are also proximate and can be given consideration, though they are on the high and low side of the others in economic and demographic terms. Adams is even more dissimilar. The remaining cities are quite distant and not necessary, given the number of proximate, agreed upon comparables.

The Employer called the Arbitrator's attention to the prevalence of dual drug co-payments among the comparables. The Union called the Arbitrator's attention to the fact that virtually all had lower co-payments than is proposed by the Employer, and had a cap on enrollee drug payments. The Union argued that all plans had a myriad of differing provisions, and that comparisons can only be made on gross features such as plan type and cost. Wisconsin Dells premiums were not much above the comparables it defined. As noted above, the average premiums for the Employer's primary comparables are even higher than Wisconsin Dells ($227/529).

Percentage wage increases in Comparable Cities

City	1997	1998	premiums	drug co-pay
Baraboo	NS	NS	$257/664	$ 2 ?
Lake Delton	$.48 (3.3-5%)	$.53 (3.8-5.6%)	177/449	4/8 cap
Portage	$.45 (3-4.1%)	$.52 (3.4-4.4%)	177/449	4/8 cap
Prairie du Sac			177/449	4/8 cap
Reedsburg	$.60- $1.00(city) 4-6% (utilities)	$.60-** $1.00(city) 2.5+2.5% (utilities)	216/493	none
Richland Center	3% DPW 2.6-10.1 6.6%, 7.6% Utility	3%DPW 3% Utility	186/471	4/8 cap
Sauk City	$.44 (2.8-4.6%)	NS	198/564	5/10 ?
(others)				
Lodi	3.5%	1% +*	175/437	?
Mauston	?	3%	231/583	4/8 cap
WI Dells	$.41 3%	$.42 3%	196/519	5(U) 5/10 (E)

*new longevity plan **several reclassifications

The average single premium for the comparables listed above is $199/mo. or $3 more, and the average family premium is $507, or $12 less. Further, the Union noted that the wage increase (3%/3%) included in both offers is the lowest of the comparables. The Arbitrator would conclude that if the Employer's proposals are to be considered a status quo change there is an absence of evidence of a quid pro quo for this change. If, as the Employer contends, the change does not rise to such a level, then the Union's offer (3%/3%) is closer to the prevailing pattern than is the Employer's (approximately 2-1/2%/3%) offer.

The internal comparisons are said by the Employer to favor its offer. As the Undersigned and other arbitrators have held elsewhere, however, one settlement involving a minority of employees does not constitute a prevailing internal pattern. The Union's contention that the Police could be forced to accept the Employer's offer (as, of course, is the case with the non-represented administrative employees) is noted. Its refutation of the Employer's "evidence" that the City doesn't assert its power to get what it wants with the Police is also noted. The Undersigned takes at face value the City's contention that it bargained the health care concessions in good faith; however, it clearly knew that it needed to give them something in order to "buy into" the change.[23] The result was that the Police received 1% more over the two years than has been offered to AFSCME employees and a 1.03% greater lift, as well as other benefit increases. The Employer has submitted data suggesting that the Police may be "underpaid" relative to the AFSCME employees so the extra wage increase could be for more than the health care concession. The Employer's contention that the extra 1% was for a third year of the contract (and not the health care concession) is not supported by evidence. Moreover, during the period of time under consideration, cost-of-living increases continued to fall, suggesting to the Arbitrator that the primary beneficiary of a third year settlement of 3% was not necessarily the Employer. Lastly, the contention that the health care modifications were understood to be a non-issue in bargaining with the AFSCME employees after the Police agreed to them is not convincing. It would seem that when the City also proposed a two-tiered wage system ("fighting words", to some), along with the health care proposals, and then had not necessarily withdrawn it, the City might have appeared to be using the "blockbuster" bargaining gambit and would have been expected to have gotten unit employees' attention. It would appear to the Arbitrator that the comparisons with other City employees favors the Union's offer. Comparisons with school district employees would seem to favor the Employer's offer, though the terms of employment and health care provisions are different and have not been presented in a manner so as to reach a firm conclusion.

Cost-of-Living considerations would tend to favor the Employer's offer were there few existing settlements to guide the Undersigned as to how this consideration factors into bargaining outcomes in the area. The Employer suggested that unit employees' overall compensation is rich vis a vis the comparables but only provided limited information on longevity payments, and not other aspects of overall compensation. Lastly, the Employer has argued that the interests and welfare of the public is best served by an award in its favor because the provisions of the new plan

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[23]Employer Exhibit 27.

encourage more economy in the use of health care services, and because it provides for the same health care plan for of all Wisconsin Dells' employees. As discussed above, with the exception of the equity issue, the Undersigned would agree that this factor favors the Employer's offer.

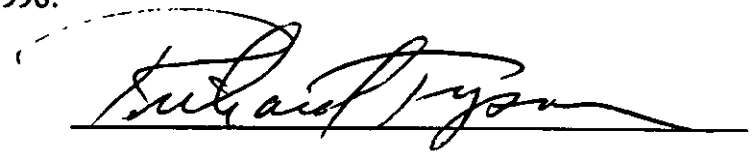
The parties' respective offers present a difficult choice. The Union's proposal is clearly more acceptable in relation to settlements of the comparables' employees. Consideration of the "greater factor," the relative economic conditions, would perhaps also call for its acceptance based on the information provided to the Arbitrator. The Employer's proposal for the health plan limits and penalties has appeal to this Arbitrator, but apparently not to the Union. As a change in the status quo the Employer shoulders the burden of its justification which in the opinion of the Undersigned it has not done. He believes that the parties will implement the Unity Plus HMO ("FF") plan when an appropriate determination of its merits and the sharing of its benefits and costs is made-- a determination best done through the collective bargaining process.

Award

Having carefully considered all of the evidence and argument of the Parties set forth above as well as the arbitral criteria provided under Section 111.70 Wisc. Stats., it is the decision of the Undersigned that:

> The final offer of the Union is to be incorporated into the 1997-98 Collective Bargaining Agreement with the City of Wisconsin Dells.

Dated this 13th day of October, 1998.



Richard Tyson, Arbitrator

Name of Case: Wisconsin Dells, City of

The following, or the attachment hereto, constitutes our final offer for the purposes of arbitration pursuant to Section 111.70(4)(cm)6, of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me. Further, we (do) (~~do not~~) authorize inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted to the Commission.

2/27/98 (Date)

David White (Representative)

On behalf of: AFSCME Council 40

FINAL OFFER

OF

WISCONSIN DELLS CITY EMPLOYEES UNION

LOCAL 1401, AFSCME, AFL-CIO

All terms and conditions of the 1995 -1996 Collective Bargaining Agreement, including all side letters and letters of agreement, shall remain unchanged for a two year year agreement commencing January 1, 1997, except for the following modifications:

1. **Article XII - Hours of Work, Overtime, Payday**. Amend Section 12.11 as follows:

12.11 Any employee working in a higher pay grade for a period of ~~more than~~ five (5) ~~or more~~ consecutive working days shall receive the pay of that classification. Upon completion of the employee's assignment under the higher pay scale, the employee shall revert to his former classification and rate.

2. **Wages**:

   a. Increase all wages by 3% on the unit average on January 1 of each year of the Agreement.

   c. Effective January 1, 1997, move Tony Mackesy from Common Laborer to Operator I, and Thore Gregerson from Operator I to Operator II.

For AFSCME Local 1401:

David White
January 21, 1998