

State of Wisconsin  
Before Arbitrator William G. Callow  
704 Butternut Road  
Madison, WI 53704  
608-241-9122

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In the Matter of the Municipal  
Interest Arbitration Between  
VILLAGE OF BAYSIDE  
and  
VILLAGE OF BAYSIDE POLICE and  
FIREFIGHTER ASSOCIATION,  
LOCAL 311, L.A.W.

Case 17 No. 55931

MIA-2160

[ Dec. No. 29456 ]

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Hearings were held at Bayside, WI Municipal Building on 12/09/98 and 02/18/99.

Appearances:

For the Employer: Michael Best and Friedrich, LLP  
100 East Washington Avenue  
Milwaukee, WI 53202-4108  
By: Robert W. Mulcahy

For the Association: Labor Association of Wisconsin, Inc.  
2825 N. Mayfair Road  
Wauwatosa, Wisconsin 53222

By: Patrick J. Corraggio, Labor Consultant

## **BACKGROUND OF THE CASE**

This is a statutory interest arbitration proceeding between The Village of Bayside and the Village of Bayside Police and Firefighters Association dealing with the one issue, health care insurance for the contracted years of 1998 and 1999.

A petition for a municipal interest arbitration was filed by the Union on December 19, 1997. After mediation under the auspices of W.E.R.C. investigator Stuart Levitan, an impasse was certified by the W.E.R.C. This arbitrator was selected and scheduled a hearing on December 9, 1998. Negotiations between the parties suggested that a settlement might be accomplished and by mutual consent of the interested parties further proceedings were deferred to allow for consultations by the principals. No settlement was reached and the parties scheduled a further hearing February 18, 1999. The record of the hearing was held open for the purpose of supplementing the record with additional information. Additional exhibits were presented to complete the record and the record was closed. Briefs were filed.

The statutory criteria which governs this proceeding are set forth in Section 111.70 of the Wisconsin Statutes. More particularly, subsections 7, 7G, 7R. Section 111.77 entitled "Settlement of Disputes in Collective Bargaining Units Composed of Law Enforcement Personnel and Firefighters" addresses, in subsection 6, factors that shall be given weight:

- (a) The lawful authority of the municipal 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 proposed settlement.
- (d) Comparison of wages, hours and conditions of employment of the

municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

1. In public employment in comparable communities.
  2. In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
  - (f) The overall compensation presently received by the municipal 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.
  - (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
  - (h) 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.

Wisconsin Statutes Section 111.77<sup>6</sup> provides as follows:

"The Arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification."

The parties are unable to reach agreement concerning health insurance coverage.

The Village proposes the health insurance coverage be changed to the Wisconsin Public Employers Group Health Insurance Program (State Plan) and considers the amount of money the employees shall contribute. The Village proposal also contains a modest offer of a financial incentive to encourage the Union to accept the State Plan.

The Union proposes the present health plan be maintained and the Union membership contribute what the Union describes as 50% of the increased premium. The Union

notes that the Village proposal does not offer an adequate incentive for the Union to accept the change. A significant amount of discord is shown by the record of these proceedings on the topic of incentive.

### **THE FINAL OFFERS OF THE PARTIES**

The Village states their final offer as follows: August 28, 1998

#### **FINAL OFFER OF THE VILLAGE OF BAYSIDE TO LABOR ASSOCIATION OF WISCONSIN BAYSIDE POLICE AND FIREFIGHTERS ASSOCIATION, LOCAL 311**

1. Article II - Duration - 2 year agreement January 1, 1998 through December 31, 1999.
2. Article V - Wages - Adjust wage rates to reflect across the board increases of:

Effective 1/1/98 = Three percent (3%)

Effective 1/1/99 - Three and a quarter percent (3.25%)

3. Article X - Insurance -

Revise 10.02 to read as follows:

Effective January 1, 1999 (or as soon thereafter as administratively feasible) all eligible employees who choose to be insured under the Village plan shall be enrolled in the State Health Insurance Plan. Until implementation of the State Health Insurance Plan, the employees will contribute no more than the following monthly amounts for health insurance premiums:

Family: \$36.00

Single: \$20.00

After enrollment in the State Health Insurance Plan, the Village will pay up to 105% of the premium for the lowest cost plan in Milwaukee County as defined by the State Plan.

Create a new paragraph 10.06 to read as follows and renumber the balance of the article:

As an inducement to accept the State Health Insurance Plan those

employees enrolled in the Compcare plan the year preceding the State Plan (e.g., 1998) and who remain on the payroll and are enrolled in the State Health Insurance Plan in the last month of the first full year of coverage (e.g., 1999) ("eligible employees") shall be eligible for an optional benefit as set forth in this provision. Employees who are hired after the Village employees enroll in the State Plan are not eligible employees under this paragraph.

The Village will calculate the amount of cost savings for the 12 months of the first year of coverage (e.g., 1999) due to the difference between the employer cost for the eligible bargaining unit employees identified above for health and dental insurance under the State Health Plan and Village dental plan (where applicable) and the employer premium costs for those same eligible employees under Compcare and dental insurance for the full year (12 months) preceding enrollment in the State Plan (e.g., 1998). In no case, shall the eligible bargaining unit employees receive less than one year's worth of savings.

As soon as administratively feasible after the end of the first year of coverage (e.g., 1999) those cost savings shall be made available in equal shares to each eligible bargaining unit employee as defined herein, on a one-time only non-precedential basis, in one of the following, at the employee's option:

1. Cash Value paid out at normal or disability retirement, or death while in the employ of the Village.
2. Cash value held for payment of health insurance premiums pursuant to Section 27.01 of this Agreement.
3. Cash value paid out in a separate check to the employee.

Eligible employees shall indicate their preferred option in writing to the Village by the last day of the first year of enrollment in the State Plan (e.g., 1999). Any eligible employee who does not indicate their preferred option shall be deemed to have opted for #3 specified above. Payments may be subject to deductions as required by state and federal law.

4. Revise Section 10.11 effective with the first date of implementation of the State Health Insurance Plan:

Any employee who is eligible for a health insurance plan offered by the Village and takes no health insurance coverage shall be entitled

to 50% of the savings incurred by the Village. This 50% savings shall be paid to the employee on the first paycheck in December of each year, in a separate check.

5. All tentative agreements as initialled.
6. Status quo on the balance of the contract.

The Village of Bayside Police and Firefighters Association, Local 311 states their final offer as follows:

VILLAGE OF BAYSIDE POLICE & FIREFIGHTERS ASSOCIATION, LOCAL 311  
FINAL OFFER  
July 22, 1998

The 1996-1997 Agreement will continue on into 1998-1999 with the following changes:

1. Tentative Agreements as attached hereto.

2. Article II, page 2.

Change all dates to reflect a two (2) year agreement starting on January 1, 1998 and concluding on December 31, 1999.

3. Article V - Wages, page 5.

Effective January 1, 1998	3 % across the board
Effective January 1, 1999	3.25 % across the board

4. Article X - Insurance, page 11, Section 10.02, line 8.

Effective January 1, 1999, Delete "\$36.00" for family and insert "\$50.00".  
Delete "\$20.00" for single and insert "\$25.00".

This arbitrator has taken notice of Article IX-Schools & Training, Article XVI-Holiday Pay, Article XVIII-Sick Leave, Article XXXI-Grievance Procedure, and Savings Clause as shown in Exhibit 300. ((Union) relating to costs in the stipulations.

## **GENERAL BACKGROUND**

The Village of Bayside employs 38 employees in total. Nine employees in the public works bargaining unit ("DPW") are represented by AFSCME, seven dispatchers are represented by the Labor Association of Wisconsin, and 13 sworn police officers involved in this proceeding are also represented by the Labor Association of Wisconsin. Of those sworn officers, three are sergeants and 10 are patrol officers. Of the patrol officers on staff at the time that this case was initially prepared for hearing, ten employees took family coverage and three employees had selected single coverage for health insurance. Nine employees had enrolled in family dental, three in single dental and one employee did not take dental insurance.

## **Discussion**

This arbitrator has taken notice of the lawful authority of the Municipal employer and the stipulations of the parties.

Fundamental to the issue presented is the interest and welfare of the public's financial ability to, through their unit of government, meet the costs of any proposed settlement. This interest and welfare must recognize the quality of service the public expects from its employees and the responsibility of the Village to adequately provide compensation to those employees for their service to the public. While mounting costs of health care is a paramount issue, there has been no definitive statement that the Village cannot afford the health insurance presently in effect.

The arbitrator is instructed to examine (1) Public employment in comparable communities and (2) in private employment in comparable communities. Each of the parties has cited comparables in the public sector. The northern suburbs of Milwaukee are particularly

significant but appropriately other more distant communities having similar characteristics offer persuasive reasoning on the subject problem. An examination of these comparables show diversity in size, compensation, working conditions, and incentives. Comparables are never exactly comparable. So many factors must be balanced , no clear picture emerges. All that can be compared is the general overall compensation offered by other communities to their employees. Thus, comparables have their strength in excluding the possibility of significantly divergent compensation. Since no evidence is offered to show overburdensome financial hardship to the Village which might require a lesser compensation it must be assumed no overburdensome financial hardship exists. Like private enterprise governmental units must exercise fiscal accountability, and that is recognized by this arbitrator to be one goal of the Village management. Increasing health costs are endemic to these times, but solutions are illusive.

The parties do not dwell on the issue of consumer prices for goods and services specifically but the reference to comparables addresses by inference this cost of living issue which is fundamental to all contracts for services.

The overall compensation presently received by Municipal employees does not offer a picture of inequities. Some municipalities offer greater compensation in some areas but when the comparables are all studied it becomes obvious that neither the Village or the Union can demonstrate that the Village and their employees are deemed fair treatment by their conditions of employment. In analyzing the comparisons offered it is patently clear that these comparisons are not supportive of a definitive conclusion that the Union or the Village are disadvantaged. It would needlessly burden the record to set forth in detail the multiple comparisons offered. Bayside is significantly average in their contract relationship with the Union. Sifting and winnowing the extensive commentary presented by the parties leads to the inescapable conclusion that the



relationship of the Village and its employees is significantly similar to other communities. The more desirable advantage to one side noted in one contract has in most instances a less desirable condition elsewhere. It becomes obvious that most, if not all of the comparable communities, agree to contract terms that treat employees, in total, quite similarly. Therefore, the weight of the comparables support the conclusion that the present health plan could be sustained and maintain equitable comparisons.

There were no significant changes in circumstances made known to this arbitrator during this extensive arbitration time period.

In considering these issues of arbitration the arbitrator has considered and given the greatest weigh to any state law, or directive lawfully issued by a state legislative or administrative officer, body, or agency which places limitation on expenditure that may be made or revenues that may be collected by the Municipal employer.

This arbitrator has commented on and taken note of economic conditions references in the record of these proceedings. This arbitrator recognizes the statutory obligation to give greater weight to economic conditions in the jurisdiction of the Municipal employer than to any of the factors specified in subdivision 7R.

The Village identifies the Unions's position on health care cost containment as willingness to share the premium cost. The premium annual cost is approximately a 10% annual increase. Mr. Sherman, the Village Administrator, testified the Village recognized that the employee concerns were "extremely important to the Village." It appears health care is a significant part of employee compensation and the Village has accommodated the cost necessary to provide acceptably adequate health care. The Village depreciates the amount the Union is willing to contribute to health care premiums in their brief. The Village says their notes from bargaining

meetings make reference to a Voluntary Employee Benefit Association in which the Village would contribute \$450 per year in exchange for going to the State Plan. Such a fund would be used for retirees health insurance. The Village expressed a desire to check further as to whether this type of plan would circumvent the State Plan requirements that an employer pay only 105% of the lowest cost plan. Apparently no further check was made and the Village suggests the Union didn't have an interest in such a plan and it wasn't pursued. Thus, another quid pro quo effort was abandoned. The Village final offer provided only for full reimbursement to the Union of the first year premium savings. The Union witness, Mr. Tomcek, testified as to the extent of the coverage of the State Plan noting the definable differences between that plan and the Compcare plan. The Village witness, Ms. Richie, and Mr. Tomcek acknowledged differences between the plans. It becomes a consumers choice as to which plan is the best value for the premium. The arguments about the stability of plans, the desperate choices the consumer has in services and other noticeable differences are just other elements that color the choice. The Village does not have a current Compcare-Bayside contract that is up to date with the many mandated benefit changes. The Union is deeply concerned that the Village failed to maintain an available to employees booklet reciting health care benefits. This failure handicaps health care analysis.

The Village makes a point that other Bayside Village employees accepted the State Plan is simply evidence of their performance. However it appears that they recognize that while acceptable, it is only available if the Police-Firefighters and Dispatchers decide to accept the State Plan.

All of these considerations seem to have balances and counterbalances. The general rule that there must be a compelling reason for change requires this arbitrator to value these considerations to see if there is a compelling reason to abandon Compcare in favor of the

State Plan. The arbitrator must give attention to the overall total compensation of the employees. The Village calls the attention of the arbitrator to the D.C. Everest Area School District, Dec. No. 24678A (2/88) defining the analytical structure to apply in cases in which a party proposes a change in the status quo. (1) Has the party proposing change demonstrated a need for change? (2) If there has been a demonstrated need, has the party proposing the change provided a quid pro quo for the proposed change? (3) Arbitrations require clear and convincing evidence to establish that 1 and 2 have been met? In response to this standard the Village alleges they have demonstrated a need for change; offered a viable, low risk solution which is supported by comparables; negotiated this health plan and financial inducement with the other union; demonstrated the adequacy, if not the generosity of the quid pro quo.

The Village identifies the health care problem as immediate and should be addressed before a crisis occurs. It is a problem of significant concern but the Village is correct that it has not reached the crisis stage. We are in the last six months of the 1998-1999 contract period, so the health care problem for this time frame is almost exhausted. The stabilization of the health care program urged by the Village deals with the future, not this contract period for all practical purposes. This eighteen month contract negotiation period has purpose in that it should have educated the parties that more adjustment in positions is necessary to bring about a negotiated settlement. Both sides call the arbitrators attention to the success of other communities in settling contract disputes.

The Village draws comparisons with other comparables declaring the Bayside "benefits are as good or better than those offered to other area police officers." The Village sets forth many "if's." The speculation is hardly persuasive.

The Village casts the problem in economics. Economics involves many things.

The ability to fund compensation is a significant factor. If funding difficulties appear severe then less benefits can be offered to employees with justification. Mr. Sherman, the Village Administrator, identified the Village's concern over "potential" increases. This is consistent with the Village's "if" commentary. Mr. Sherman testified that, contrary to the Village assertions of lack of Union cooperation, that "the association (Union) showed a great deal of interest in working with the Village over the health care issue." Concerning the AFSCME agreement cited by the Village as an internal comparison, the Union argues that agreement appears to be more generous than that offered to the Police-Firefighters. The Union notes that it was the Village that proposed Compcare for health insurance 10 years ago and the Union accepted the Village's choice. The Union makes a point of rebutting the Village's comparison with Oconomowoc by showing Oconomowoc gave a 5% wage increase as a quid pro quo for the Union's acceptance of the State Plan. The Union references other communities that recognized the need for a significant quid pro quo inducement to switch to the State Plan.

The Village argues their final offer is superior to the Union's final offer because the Village has looked at various alternatives; hired consultants; educated its employees; bargained successfully and reached agreement with AFSCME; adopted a resolution to implement the change for administrative employees; offered to fully share the savings; and expended considerable time, money and effort to assure a reasonable transition to the State Plan.

The Union argues their final offer is superior to the Village final offer because the Village refused to offer any quid pro quo until after mediation failed; the Union was willing to discuss health care insurance; good faith bargaining does not require concessions simply because of the opposing side expressing a "desire" for change; the Village has not proven a need for change. LAW has successfully reached voluntary agreement wherein premium costs were reduced

while maintaining the current health provider; the Village agreement with AFSCME agreement is significantly more generous than the final offer by the Village in this case; under the Union's final offer the increase in premiums is eventually divided between the Village and the Bayside Police Association; LAW has successfully negotiated the State Plan in other communities when the employer provided fair and equitable quid pro quos; and other assorted reasons.

The extensive arguments of the parties do not support a conclusion that a change in health care is necessary to serve the best interest and compelling needs of the Village. Health care is a very personal matter to employees and their interests have been respected by the Village for many years. The Village in the exercise of financial responsibility seeks to make a substantial change in the health care portion of the contract. When harmony has existed in contract relationships, the need for change must be compelling. The Union has looked for a quid quo pro - a significant compensation to give up a contract right that has existed for quite some time. The modest quid pro quo offered is not adequate to warrant the surrendering of the present health care program. Change should not be imposed by an impartial arbitrator unless there are compelling reasons. The Village's argument that the State Plan is better for the employees is parental and unimpressive.

It is not conclusive that the State Plan serves the best interests of the Union membership. The concern about rising health care costs by the municipality is entirely reasonable but a compelling need for change at this time has not been demonstrated.

The interest and welfare of the public is best served by a conclusion that the final offer of the Union is more compelling to produce harmony between the parties. The need for change has not been demonstrated under the standards set forth in the several sections of the statutes identified in this decision and award.

Accordingly the arbitrator finds:

- (1) The final offer of the Union is the more appropriate of the two offers before the arbitrator.
- (2) The final offer of the Union, is hereby incorporated by reference into this award, and ordered implemented by the parties without modification.

Dated July 16, 1999.

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William G. Callow

Impartial Arbitrator