BEFORE THE ARBITRATOR

In the Matter of the
Interest Arbitration between

TOWN OF GRAND CHUTE (POLICE DEPARTMENT)

Case 19 No. 59607
And MIA-2379
Decision No. 30236-A

WISCONSIN PROFESSIONAL POLICE
ASSOCIATION, LAW ENFORCEMENT
EMPLOYEE RELATIONS DIVISION

INTEREST ARBITRATION AWARD

Appearances:

Mr. William Bracken, Employment Relations Services Coordinator, Davis & Kuelthau, S.C., on behalf of the Town.

Mr. Thomas Bahr, Business Representative on behalf of WPPA/LEER.

The above-captioned parties, hereinafter referred to as the Town and the Association respectively, have been parties to a series of collective bargaining agreement throughout the years. The Association filed a petition to initiate compulsory final and binding arbitration pursuant to Sec. 111.77(4)(b), Stats., with respect to an impasse between it and Town of Grand Chute (Police Department). The undersigned was selected from a panel provided by the Wisconsin Employment Relations Commission. Hearing was held in Grand Chute, Wisconsin on February 11, 2002. No stenographic transcript of the proceedings was made. All parties were given the opportunity to appear, to present testimony and evidence, and to examine and cross-examine witnesses. The parties completed their post-hearing briefing schedule on April 14, 2001. The record was closed upon receipt of the last reply brief. Now, having considered the evidence adduced at the hearing, the arguments of the parties, the contract language, and the record as a whole, the undersigned issues the following Award.

ISSUE AND FINAL OFFERS:

The Arbitrator is charged with selecting a final offer for incorporation into the parties' collective bargaining agreement.

TOWN'S FINAL OFFER

1. All provisions of the 1999-2000 Agreement between the parties shall continue in the successor agreement except for any tentative agreements reached and the final offer below.

2. Article XXVIII-Duration of Agreement, Section 28.01 – Change the dates to provide for a two year agreement from January 1, 2001, 2001 through December 31, 2002.

3. Article XVI – Health Insurance, Section 16.01 – Delete and insert the following:

   The Town shall provide the Wisconsin Public Employers Group Health Insurance Plan coverage for all full-time employees covered by this Agreement. The Town shall pay up to 105% of the premium rate of the lowest cost qualified plan in the Town's service area for either single or family coverage. Effective July 1, 2002, the Town shall pay 97% of the premium rate of the lowest cost qualified plan in the Town's service are for either single or family coverage. It is understood that the Town, may, at its option, change insurance carriers for the employees, as long as other Town employees also receive the same insurance plan.

   The Town shall pay the dental insurance premiums for the single or family plan coverage for all full-time employees covered by this Agreement. It is understood that the Town may, at its option, change insurance carriers for the employees, as long as other Town employees also receive the same insurance plan.

4. Wage Appendix – January 1, 2001 – 2% across-the-board increase for each classification. July 1, 2001 – 2% across-the-board increase for each classification. January 1, 2002 - 3% across-the-board increase for each classification. July 1, 2002 – 1% across-the board increase for each classification.

ASSOCIATION'S FINAL OFFER

The Association makes the following final offer on all issues in dispute for a successor Agreement to commence on January 1, 2001 and remain in full force and effect through December 31, 2002.

1. All provisions of the 1999-2000 Agreement between the parties not modified by way of any previous tentative agreements, and/or by this final offer shall be included in the successor Agreement between the parties for the term of said Agreement.

2. The term of the Agreement shall be for the period of January 1, 2001 through December 31, 2002. All dates relating to term shall be modified to reflect the above-cited term.

3. ARTICLE XVI – HEALTH INSURANCE

   Modify Section 16.01 as follows: (omit paragraph not underlined and substitute underlined paragraphs)

   The Town will pay for the health, surgical and dental insurance premiums for the family or single plans for the full-time employees. The town will pay any increases in premiums for the above plans in calendar years 1997 and 1998. It is understood that the Town may, at its option, change insurance carriers for the employees, as long as other Town employees also receive the same insurance plan.

   The Town shall provide the Wisconsin Public Employer's Group Health Insurance Plan Coverage for all full-time employees covered by this Agreement. The Town shall pay 105% of the premium rate of the lowest cost qualified plan in the Town's service area for either single or family coverage. It is also understood that the Town may change insurance carriers provided, however, that the Town maintains coverage that is substantially equivalent to the Wisconsin Public Employer's Group Health Insurance Plan coverage.

   The Town shall pay the dental insurance premiums for the single or family plan coverage for all full-time employees covered by this Agreement. It is understood that the Town may change dental insurance carriers provided, however, that the Town maintains coverage that is substantially equivalent to the existing level of benefits.

   Disputes over the application or interpretation of the term "substantially equivalent" shall be resolved using the grievance procedure.

4. WAGE INCREASE

January 1, 2001	2.0% for each classification
July 1, 2001	2.0% for each classification
January 1, 2002	2.0% for each classification
July 1, 2002	2.0% for each classification

STATUTORY CRITERIA:

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.77(6)), Wis. Stats., as follows:

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 these costs.
d. Comparison of wages, hours and conditions of employment of the 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 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.
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.

POSITION OF THE PARTIES:

Town's Initial Argument

The primary thrust of the Town's argument is that its offer comports in most respects with what other municipalities and unions have voluntarily agreed to, while the Union's offer, as a whole, is unreasonable and attempts to break new ground without providing a *quid pro quo*. The economic and political environment has changed drastically with the governor's proposal to slash shared revenue to municipalities and the local, state, and national economy is in a recession with health insurance costs continuing to rise at exorbitant rates. All of these factors warrant moderation in the granting of wage and fringe benefit increases. The explosion of health insurance costs alone makes it eminently reasonable for employees to pay a portion of their health insurance cost. While asking for the contribution, the Town is offering a *quid pro quo* of an additional 1.0 % increase in wages effective at the same time the 3% employee premium contribution begins. The Town's offer is slightly higher than the comparable

settlement rate in 2001 with six of the seven comparables requiring employees to pay a portion of the health insurance premium.

Not only does the Union's offer fail to recognize the prevailing pattern of employee health insurance contributions, but it also seeks to impose a "substantially equivalent" standard on benefits in the event that the Town changes carriers. This offer without any *quid pro quo* is far too much and does not meet the statutory criteria. In contrast, the Town's offer brings the level of fringe benefits in line with the external comparables and bring the police employees into line with the benefits provided to the other non-represented Town employees.

Because the Association failed to introduce evidence regarding the cost of the two final offers, the Town's figures must be accepted. They show an aggregate increase of 15.6% under the Town's offer in the first year and 8% the second year, the 45% increase in health insurance for 2001 being one reason for the dramatic increase. The Town's 2-2% split in 2001 amounts to 4.23% overall wage increase including various roll-ups, with a total package increase under the Town's first year offer of 7.2%. The Association's offer is the same for the first year. In the second year, salaries will increase 5.4% reflecting the 3-1% split with wage roll-ups and the overall total package under the Town's offer for 2002 amount to 6.1%. Under the Association's final offer in 2002, the increase is 4.9% with a 5.9% total package increase. Comparing final offers over the two- year period, the Association's offer produces total salary increases of 9.4% and a total package increase of 13.5%. When all costs are compared, the Town's offer of $3,077 above the Association's offer, but when fringe benefits are compared, the Association's offer exceed the Town's offer by $1,660. The Town's offer is $4,700 above that of the Association on wages for the second year to offset the 3% employee contribution towards health insurance, so that the final offers are fairly close with the Town's offer being preferred when reviewing the wage increase.

There is a pattern of increasing monies being allocated to fringe benefits stated as a percent of salary, 35% in 2000, 38% in 2001 under both offers, and 39% under the Town's and 40% under the Association's offer for 2002.

The additional 1% in wages under the Town's 2002 offer is a "buy-out" to induce employees to participate in the health insurance premium and a sufficient *quid pro quo* for the 3% employee contribution. The Town argues that its comparables are more relevant that the Association's. It points to the Village of Combined Locks, Fox Valley Metro (Villages of Little Chute and Kimberly), City of Kaukauna, City of Menasha, Town of Menasha, City of New London and City of Waupaca as the appropriate comparables. Both parties agree that Fox Valley Metro, City of Kaukauna, City of Menasha and Town of Menasha are comparable. The Town has utilized a labor market approach that attempts to compare municipal employers of the same size and staff in the same geographical with the similar socio-economic characteristics such as full valuation, total property tax and full value tax rates. The Town notes that the Association has utilized some of these same factors as well as state crime index offenses for violent offense, property offenses and clearance rates. The Town does not believe that certain of

the Association's comparables should be used because they are not in the same geographical area. The Town objects to those comparables which are so geographically removed from Grand Chute as to make wage and fringe benefit comparisons meaningless. The Town requests that the Arbitrator select its proposed comparable group for defining the relevant comparables utilizing the factors traditional employed by other arbitrators claiming that the parties themselves have never agreed upon the appropriate comparables in past bargains.

The Town's main issue is requiring the 3% contribution from employees toward health insurance. While it is not naïve enough to believe that this solves the entire health insurance problem, the Town believes that an employee contribution underscores the point of how expensive the health insurance benefit is. It cites arbitral precedent as standing for the proposition that the employee contribution issue is an "ordinary and not important change" but basically an economic issue. In the Town's, view the previous guarantee of 100% payment by the Town can no longer be made given the changed economic reality of 20%+ health insurance increases for the past several years. Health care costs have sky-rocketed from 5% in 2000 to 12.5% in 2002. This fact alone proves the Town's need to control costs.

Under the Town's proposal, employees on the single plan would pay $9.46 per month while those on the family plan would pay $23.57 per month. Moreover, these contributions are on a "pre-tax" basis prior to utilizing a Section 125 Plan. Taking into consideration the tax savings of 30%, the contribution drops to $6.62 and $16.50 respectively. The Town argues that only 5% of the 793 plans offered required no employee contribution to the monthly premium for family coverage under an HMO and 25% required contributions of over $100 per month. The Town cites several studies purporting to show that employers intend to pass more health care costs incurred in 2002 to their employees. Escalating health insurance costs are a problem facing every organization in both the public and private sector and there is and absolutely critical need for employers to get a handle on the amount of money to be spent on health insurance.

In the Town's view, its offer does not reduce an expensive and valuable benefit; it simply asks employees to pay a small portion of its costs to maintain it. The State's plan is a very rich program with no deductible and modest $5.00 co-pays for generic drugs subject to an annual out-of pocket maximum of $270 per participant or $540 per family. It is an improvement from the previous plan in place prior to 2001. No reduction in benefits occurs so that in a sense, the Town's proposal does not change the *status quo*.

Furthermore, the Association's proposal to ad a "substantially equivalent" standard to the current contract language should be rejected as unnecessary, problematic and advanced without a *quid pro quo*. It is unnecessary because the Association cannot point to a problem with the current language and the Association has not met its burden of proof in justifying the change. It is problematic because the parties may end up grieving what "substantially equivalent" means. This is an ambiguous term that can only lead to problems. No *quid pro quo* has been provided and the proposal does not pass the three-pronged test set forth by Arbitrator Malamud to modify the *status quo*.

Employees generally approved the switch to the State Plan from the previous plan because the benefit levels were the same or better under the State Plan. The Town insists that its offer is in keeping with the balance between the employees' interest in maintaining a high level of benefits and the Town's interest in paying for the least costly plan that meet that level of benefits. The Town notes that currently it is required to pay 105% of the lowest cost qualified plan for either single or family coverage so that it is required to pay more toward the cost of the two more expensive plans of the three plans available. The Association's proposal, therefore, defeats the purpose of steering employees to the lower priced plan.

The Town submits that its offer meets the *status quo* change test. While admitting that its proposal does change the *status quo*, the Town stresses that it has articulated compelling reasons for doing so. It submits that it has provided evidence which serves as the basis for the employer to ask for a small concession on insurance. It has not placed an unreasonable burden on the employees and adopting its offer would not create an undue hardship on any employee. Most employees would be happy to pay just 3% towards their health insurance premiums. The extra 1% in wages that the Town is offering at the beginning of the second year represents a tangible and significant *quid pro quo* because the Town is willing to "buy" the employees' participation in health insurance with a very generous and sizeable wage rate increase. The Town also points out that it matched the Association's 2-2% split for 2001 which was above the prevailing settlement rate by about 0.6% which also must be construed an additional *quid pro quo*.

Even after taking the 3% health insurance contribution into account, employees will see a net gain in salary. Furthermore, the Town's offer is generally more competitive that the Association's offer because it has front-loaded the second year. The Town provides a high standard of wages, hours and working conditions for its employees. It is simply asking for reciprocity in the face of staggering health insurance costs. Under the circumstances, a "quid pro quo" is not absolutely necessary in light of the economic reality which forces the change.

Noting that the Association will likely argue that the Town's offer amounts to "cost-shifting" and will do nothing to contain health costs, the Town insists that the "cost-shifting" will provide "cost-savings" to the Town. It points out that there may be some employees who are covered by another plan but also currently opting for health insurance because it does not cost them any money. Under the Town's proposal, these employees may drop their coverage. Requiring employees to contribute the three per cent brings home the point that health insurance is not a "free lunch" and is the first step in the door towards containing health insurance costs. The requirement that employees contribute will underscore the necessity of both parties examining other ways to contain health insurance costs.

The overwhelming practice supports the Town's position, especially with regard to the private sector where employees are paying more and more of the health insurance costs. Full employer payment, in the Town's view, is now more the exception

than the rule. The Town's offer has been consistent with respect to non-represented employees and employees employed by the Grand Chute-Menasha West Sewerage Commission of which the Town is a member. It will also be making the same offer to the other represented bargaining units. All but one of the Town's comparables require the employees to make a contribution. The Town's offer does nothing more than bring the Town's fringe benefits into line with the comparables. Even the Union's own evidence shows that employees pay a portion of the health insurance premium in all of the ten comparables. Adopting the Union's comparables, it is evident that employees pay substantially more than that proposed by the Town in the instant case. Whichever comparability group is utilized suggests that employees are paying a significant portion of the health insurance premium. The 3% contribution is reasonable when viewed with the comparables.

The Town alleges that arbitral opinion heavily favors the Town's offer, citing various awards where arbitrators have permitted requiring employee contributions. The Arbitrator cannot ignore the current economic and political environment and that the interest and the welfare of the public are served by its offer. This is the case because the Town's offer promotes accountability. Given the Governor's shared revenue proposal, the Town will have to make cuts in essential services. Four hundred employees are being laid off from Rich Products, a large private employer in Grand Chute and the Fox Cities metro area is currently showing signs of a weakened economy, given that thirty percent of the area's workforce are engaged in manufacturing and more susceptible to the business cycles. Other large private employers are contemplating lay-off and the unemployment rates in the Fox Valley area have steadily increased and are creeping upwards.

Unless the parties embrace a total package approach, the Town is short-changed the value of bargaining such an extensive array of fringe benefits. The health insurance increases outstrip the CPI over the same period of time and health insurance costs are expected to continue increasing at double-digit rates.

According to the Town, its wage offer is also preferred when measured against the comparables although this issue may pale in comparison to the health insurance issue. It acknowledges that there is very little difference between the wage offers. At the wage minimums, the Town ranks first among its comparables and this is evidence of competitiveness on the Town's part with respect to the beginning wage rate. This same trend would continue under either offer. In terms of wage maximums, this is not the case with the Town ranking sixth out of seven in 1999. Under the Town's offer, by 2002, its maximum wage rate would rank third out of five settled comparables. The Town's offer in 2001 is ½ of 1% above the prevailing pattern and for 2002 it is .6 of 1% above the prevailing settlement pattern. The Town's offer is above the average settlement rate among all comparable municipalities and contains a built-in *quid pro quo* necessary for the modest 3% contribution toward health insurance proposed.

According to the Town, its wages are competitive as evidenced by the lack of turnover of staff, in that not a single full-time employee has left the department in the

past five years and there has been no hardship in recruiting new employees. Therefore there is no reason to increase wages more than the prevailing settlement pattern, especially since the Town's offer is above the cost of living. Its final total package offer of 7% and 6% total packages exceeds the CPI. Bargaining unit employees will not suffer a reduction spending power and will actually gain in very real terms. The cost of living criterian should receive significant weight from the arbitrator.

The overall compensation factors also strongly supports the Town's offer because the Association cannot have relatively large wage increases and preserve the existing expensive health insurance benefits at the same time. The Town is upset because the Association will not even present costing on a total package basis. Arbitrators consider total package costs even if it includes increases in insurance premiums as the best barometer of the value of any settlement.

The Town submits that the Association's offer is unreasonable because it fails to recognize the cost to the Town of preserving health insurance benefits. All but one of the Town's comparables require a contribution to family health benefits and all of the Association's proposed comparables require a contribution to family health insurance with only a few paying full single insurance. It is unreasonable for the Association to disavow the cost of maintaining the fringe benefits. Under the Association's offer, the Town is "locked into" accepting whatever increase the carriers charge. This is the inherent problem with the uncapped nature of the health insurance benefit. The Association cannot have the best of both worlds and its offer is unreasonable because it refuses to acknowledge the inherent trade off between salaries and benefits. The Town's offer is more reasonable.

Association's Initial Argument

There is no real argument that the Employer does not have the authority to lawfully meet the Association's final offer. The Association acknowledges that on March 30, 2001, the health insurance provider informed the Town that it was increasing premiums by a factor of 114% with family insurance premiums going from $543.26 to $1,143.53 and single premiums from $182.59 to $390.77. Based upon those increased costs, the parties in August of 2001 agreed to enroll in the Wisconsin Public Employers' Group Health Insurance plan so that there was an immediate reduction of premium costs and a change in premium contributions of the employer to not more that 105% of the least expensive plan offered by the State Plan. The change resulted in savings of $41,280 for the bargaining unit for the last five months of 2001.

The Association submits that the interest and welfare of the public will best be served by the Association's offer. Because it recognizes the need to maintain the morale and health of the Town's police offices and will assist in retaining the best and most qualified officers. Because law enforcement officers work along side other offices from other departments, there is a need for the benefits to be similar. The Association points to its exhibits to establish that the Town ranks 3rd in the incidence of violent crime and 1st in the incidence of property crime among the comparables. These rankings make it

imperative that an officer performs his or her duty with a professional demeanor and the knowledge that any action taken will be held to the utmost scrutiny by the general public and the town. Should the Town be permitted to change the health insurance provisions of the agreement, morale will be adversely affected.

The Association maintains that the Town has the financial ability to meet the costs of the Association's final offer. Noting that the Governor's proposal to abolish shared revenue has little support and that its passage without modification is unlikely, the Association alleges that the Joint Committee on Finance and the Assembly's proposals to reduce state aid payment would result in no reduction in the shared revenue the Town receives for the duration of the Agreement in dispute. Thus, inability to pay is not a factor and should not be considered.

The Association disagrees with the Town as to the appropriate comparable pool pointing out that there has been no prior interest arbitration between the parties and thus no arbitral determination as to the proper comparables. Referring to discussions during negotiations in 1998 with the Town Administrator, the Association relies upon nine of the towns and municipalities identified by the Town at that time as being the appropriate comparables. It includes one additional comparable. These comparables are Town of Caledonia, Fox Valley Metropolitan, City of Menasha, City of Two Rivers, City of De Pere, City of Kaukauna, Town of Menasha, Everest metropolitan, Town of Madison and Town of Mount Pleasant. Of the comparables not geographically proximate to the Town, at the time, the Town indicated that these Cities and towns were comparable due to their similar population and governing structure. The Association to support its argument that these are the appropriate comparables relies upon the 1999 per capita income of the counties containing these municipalities and the equalized values of the municipalities cited.

The Association agrees with four of the Town's seven proposed comparables. It does not believe that Combined Locks is comparable as it has less than 12% of the Town's population and a full value that is 10% of the Town's. There are only 4 police as compared to 23 officers employed by the Town. These types of relationships also exist with respect to New London and Waupaca so that they should not be included as comparable to the Town of Grand Chute.

According to the Association, its final offer is supported by the comparables. In defense of its proposal that a standard is needed to protect the employees with respect to a change in carriers, the Association stresses that the Town has changed carriers three times in the last two years, the most recent change with the agreement and cooperation of the Association. The "substantially equivalent" standard sought by the Association is a lower standard than found in most of the comparable departments. Five of the ten have language that is specific and identifies the standard as being "equal to," "equivalent to," or "equal to or better." Three others use the term of either substantially equivalent or essentially equivalent. Two, Mount Pleasant and Two Rivers have not contractually mandated a standard. Hence, the comparables support the Association's proposal.

The Town's offer proposes to change the level of premium contribution made by the Town from 105% of the lowest cost health insurance plan offered to 97% of the least expensive plan on July 1, 2002. Prior to the move to the State Plan in August 2001, the Town was obliged to pay 100% of any plan the Town offered. The Association points out that in 2000 when the Town was paying 100%, it was only paying 68% of what comparable municipalities were paying for health insurance. If the average family premium paid in the comparable municipalities is $975.00 and assuming that the rate for the least expensive plan offered in the Town for 2002 is $785.70, the Town will only be paying approximately 80% of what is paid by other comparable departments.

These changes have not resulted in sufficient need for the Town to require employee contribution to the premiums. The Association asserts that the issue of premium contributions by the employee and employer was a matter that was voluntarily and cooperatively laid to rest. The Town ought not be allowed to now immediately change the relationship through arbitration. To allow this change would remove any incentive the parties may have to mutually make modifications to an existing Agreement, creates distrust between the parties and causes them to look at any similar situation that may occur in the future with distrust and cynicism.

With respect to wages, the Association has proposed two 2-2-% splits for both years while the Town has offered ad 3-1% split in the second year. According to the Town, since 1990, the top patrol officer wage has been catching up to the average wage paid in other comparable departments. In 2000, this wage still remains $226.00 per month behind the average. Both proposals narrow the gap to $198.00 per month for 2001. For 2002, the Association claims that its proposal would leave the top wage at $166.00 per month behind the average while the Town's would narrow the gap to $170.00. If just wages were at issue, either proposal would be appropriate. However, to suggest that the Town's offer contains some for of quid pro quo for changes in insurance premium contributions is inconsistent with the wage increase history. Internal comparables should not be considered because the other bargaining unit in the Town is in arbitration over this issue as well as other issues.

The Association maintains that the CPI supports the cost of living because settlements among the comparables are consistent with the Associations' final offer citing arbitral precedent that voluntary settlements create a reasonable barometer as to the weight that the cost of living increases should be given in determining the outcome of an interest arbitration and should be the determining factor.

No benefit or group of fringe benefits currently enjoyed by the bargaining unit members gives cause to find the Association's offer to be unreasonable. The Town's circumstances with respect to 2002 Shared Revenue entitlements should not impact upon the reasonableness of the Association's offer either.

Town's Reply

With respect to the need to maintain the morale of the police officers, the Town notes that there has been absolutely no turnover among full-time employees. This is indicative of the highly desirable working conditions found in the Town. There is no evidence of poor morale. According to the Town, the prevailing practice found among all of the comparables supports the Town's position because nearly every employer requires employees to pay a portion of the premium. Furthermore, the idea of prevailing practice supports the idea of using comparables in a more restrictive geographical area than that proposed by the Association. It is not in the interest and welfare of the public to preserve the status quo when it mandates that the Town pay 105% of the lowest priced State Plan. This is the case because the entire health insurance market has changed dramatically.

With regard to the Town's ability to pay, the Town agrees that the state budget debate is far from over and no one knows the outcome. However, it is certain that the state's relationship to municipalities is changing and the mere uncertainty surrounding the state budget mandates selection of the Town's offer. The Town's offer best addresses the issue of health insurance for the long term.

With respect to comparability, the Town denies that it has reached an agreement with the Association as to the appropriate comparables. It stresses that the parties are free to argue whatever comparables they want in the interest arbitration setting and that the Union's list of comparables is just too geographically diverse to be of any value. It notes that many of the proposed comparables on the Association's list from 47 to 111 miles away from Grand Chute. According to the Town, the Association's list was utilized in a study done by the current police chief that had nothing to do with any agreement to utilize these municipalities for determining wages, hours and working conditions. In any event the Association's data simply shows that Outagamie County residents rank in the middle in terms of per capita income.

The Town disagrees with the Association's analysis to exclude New London with 17 officers and Waupaca with 13 officers, stressing that these communities are geographically proximate with the same number of employees as Grand Chute. They are also found in the local labor market.

With respect to the proposed change in the Associaton's language, the Town alleges that the Union has never established a need for the change to insert the 'substantially equivalent "standard into the contract, nor has it offered a *quid pro quo*. Had the Association submitted a below average wage demand, it could make an argument in this regard. Moreover, the biggest problem with the Association's proposed change is that it will lead to further litigations.

The Town disagrees with the Association's assertion that the Town should be precluded from arbitrating the employee premium contribution issue because of the Association's voluntary participation in the process of changing to the State Insurance

Plan. While the Town is pleased that the Association acknowledges that the Town wages have been catching up to wages in other comparable municipalities, it believes that health insurance should receive the same attention. The Town disputes the Associations assertion that the Town's offer contains no *quid pro quo* pointing to the extra 1% effective July 1, 2002. This is meant to offset the 3% health insurance contribution. The 1% wage increase more than offsets the 3% out-of-pocket expense for health insurance. The Town also stresses that it offered an above-average settlement in 2001 which also provides a quid pro quo for the duration of this two year agreement.

The internal settlement pattern underscores the Town's seriousness in dealing with the health insurance issues. The Town's opinion differs from that of Arbitrator Kerkman in that it believes the CPI is a separate and independent statutory criterion to be distinguished from the external comparable settlement pattern. The Town's offer far exceeds the CPI. In looking at total compensation, the Town submits that it compares favorably with the comparables advanced by the Union in several areas such as annual uniform allowance, sick leave, holidays, compensatory time, vacation and dental insurance. The Town police officers have an outstanding array of fringe benefits that compare favorably with the Union-proposed comparables.

In summary, the Town believes that it has made a very competitive offer and has not shied away from offering a quid pro quo in exchange for employees paying a small portion of the health insurance premium. While the Town has made strides to catch up salaries, the Union should also be willing to pay a portion of the premium as do all of the other comparables. Base upon all of the above, the Town requests the arbitrator to accept its offer.

Association's Reply

The Association argues that in August of 2001, the parties agreed to move from a single provider plan to the State Plan. With this agreement, the Town agreed to pay no more than 105% of the least expensive plan offered rather than the 100% premium for the previous group plan offered by the Town. The Town, in its brief, ignored the most important aspect of this change, namely that the state plan is designed to promote cost saving by collecting multiple bids annually, so that employees may be required to change health care providers if they wish to maximize dollar saving.

According to the Association, the parties by agreeing to adopt the State Plan have made great strides in achieving a reliable system for containing health care costs. Furthermore employees who choose an indemnity plan or a HMO with a higher bide will contribute substantially to the premium. Employees who are, however, flexible in selecting health care providers are rewarded by having the premium paid in full. It is a win-win situation.

Here the Town wants it cake and to eat it too. It wants to take advantage of the State Plan and wants an additional premium contribution from the employees. The issue really presented is the cost of health insurance and not the proportion paid by the

respective parties. The Association notes that the August 2001 agreement saved the Town no less than $41,280.00 over five months and implemented a system used statewide to hold down future costs. The Town should acknowledge this substantial change agreed to less than a year previously to rein in the rising cost of health insurance. The only way the employees can continue to have their health insurance fully paid by the Town is to select the cheapest plan.

In the Association's, view, the status quo is the State Plan. With less than a year of experience, the Town now proposes to alter this status quo. It is absurd for the arbitrator to alter the status quo that has been in existence for less than a year. The Association notes that it has bargained with the Town and reached an agreement on a radically new method for providing health insurance for the unit employees but the Town wants still more concessions. The burden of justifying a change in status quo through arbitration after only seven months experience has not been met by the Town and on this critical issue, the final offer of the Association is preferred.

With respect to the Association's proposal to utilize the "substantially equivalent" standard, this is a moderate and not uncommon standard. Only a change away from the State Plan would be subject to this standard and this issue is clearly secondary to the main issue this is the premium sharing proposed by the Town.

In addressing the Town's representation that the Association as not provided costing information, the Association alleges that cost is not the issue in this proceeding. The wage proposals are close and the 3-1% split in the second year as some kind of quid pro quo is a bit of a reach. The case cannot turn on this issue either.

The Association acknowledges that there is a need to control health insurance costs and stresses that this need was present it the parties agreed to accept the State Plan in August of 2001. There is no question that this change has controlled costs and saved the Town an enormous amount of money in premiums. According to the Association, the Town whishes to alter the *status quo* by imposing a contribution to premiums which is 8 per cent less than that agreed to in August of 2001, not the 3% suggested in the Town's brief. The Town has not met its burden in changing from the *status quo* as it exists after August 2001. It notes the arbitral preference for agreements fashioned by the parties themselves as preferable to those imposed or unilaterally implemented. The parties, when faced with the problem of rising costs found the terms for a solution in the State Plan. The Town now wishes an additional concession and seeks the authority of the arbitrator to impose the change.

The Association notes that it has made a reasonable final offer. It requests the maintenance of the Status quo on premium sharing and the addition of the moderate standard for employer changes in the insurance. On wages, the Association proposal is less than the Town's and should be preferred. Taken as a whole, the Association requests that it final offer be adopted.

DISCUSSION:

Appropriate Comparables

Because this is the first time this unit has gone to interest arbitration, the question of appropriate external comparables exists. The parties agree on four of the appropriate comparables, the City of Kaukauna, Fox Valley Metro, the City of Menasha, and the Town of Menasha. Based upon geographical proximity and size of the workforce, the undersigned also believes that the City of De Pere and New London are appropriate comparables. Clearly these six are the most appropriate comparables. However, only six comparable municipalities is a rather small sample. The undersigned would also accept Two Rivers as comparable, although it is much farther in distance from Grand Chute.

The Town's proposal to include Combined Locks and Waupaca as comparables is rejected primarily based upon these municipalities' police forces and the differences in the populations of the municipalities, and total property taxes and full value rates. Similarly, the Association's proposals regarding Town of Caledonia, Town of Mount Pleasant, and Town of Madison are rejected as being too geographically distant and attached to economies in the Racine/Kenosha area and the City of Madison. Everest Metropolitan is also rejected as being too distant and tied to an economy which is unrelated to the Fox River Valley economic environment.

Wages

Both parties acknowledge that the dispute is really not about wages. Both wage offers fall squarely within the wage patterns established by comparable municipalities for police. Fox Valley Metro settled slightly higher in 2001 and the City of Kaukauna settled slightly higher in 2002. The 2%-2% split for 2001 proposed by both parties and either the 3%-1% offer proposed by the Town or the 2%-2% offer proposed by the Association for 2002 address the need to increase the top patrol wages so that they are more in line with those paid by the comparable departments. The Association's offer with respect to wages only is slightly favored as better addressing the interest and welfare of the public because it is less expensive. Both offers are, however, reasonable and the wage proposals are not decisive. The wage proposals have been considered to the extent that the Town has argued that its offer provides an additional *quid pro quo* for the change in the health insurance contribution and the Association has argued that the Town's offer does not really contain a *quid pro quo*.

Health Insurance Contribution

At first blush, the interest and welfare of the public tends to favor the Town's offer because it reflects the public's desire for cost containment and property tax relief as manifest in legislation, and, as the Town adroitly points out, makes employees stakeholders in their health care and its costs. The lack of turnover in the bargaining unit is also evidence that employees in Grand Chute have enjoyed generous fringe benefits

including the fully paid health insurance and that employee morale has not been adversely affected to date.

The Town has litigated this case on the basis of the spiraling, increased cost in health insurance premiums. Much of the evidence that it introduced focused around establishing the existence of this problem with which virtually all employers, both private and public are now grappling. Had the Association played ostrich and refused to even recognize the seriousness of the continuing significant increases in the health insurance premiums, it could be concluded that this is the issue which the arbitrator must address.

However, it is not the continually increasing cost of health insurance premiums that is the issue before this arbitrator. The issue presented here is the shifting of some percentage of the premium cost from the employer to the employees in the bargaining unit. It is the issue upon which the parties have not been able to voluntarily agree through bargaining.

Although both proposals contain a deviation from the *status quo* with respect to the health insurance language, the Association's proposed adoption of the "substantially equal" standard pales in comparison with the Town's proposal to require an employee contribution. This is the case with respect to both the importance of the proposals and the impact upon the parties and their bargaining relationship.

The "substantially equal" standard proposed by the Association or similar language is fairly common and found in many collective bargaining agreements. At least half of the comparable agreements contain some form of this language which regulates benefit levels in the event of a change in health insurance carriers and requires that the levels remain substantially or approximately equal.

By requiring an employee contribution to the premium, the Town is proposing a significant change. Accordingly, the Town has the burden of satisfying the generally accepted test for making such a change. Arbitral authority and practice indicate that the party proposing the change must present a compelling case for its proposal, that the proposal is needed as a remedy or that it has intrinsic merit, and that it has offered an adequate *quid pro quo*.

The Town has failed to present a compelling case for its proposal at this time. It has also failed to establish that its proposal is needed as a remedy to the problem that it has identified. The parties just newly negotiated a move to the State Plan in August of 2001 with a proviso that the Town would pay no more than 105% of the least expensive plan offered. As the Association has noted, this is a significant concession and a departure from the previous language which required 100% contribution on the Town's part for the group plan offered by the Town. There has been insufficient time elapsed to ascertain whether or not this voluntarily negotiated move will achieve significant cost savings.

The State Plan provides for some amount of built-in competition among providers and only employees who are willing to be very flexible with their health care providers will continue to receive their health care premium paid in full by the employer. The Town's proposal differs from the status quo by reducing the Town's contribution by 8%, not the 3% that it alleges. This is the case because employees currently are guaranteed the Town's payment of 105% of the cost of the least expensive State Plan offered.

Given the recent switch to the State Plan and the fact that the Town has achieved substantial savings through this voluntarily-negotiated change, it simply cannot be concluded that a compelling reason and sufficient need for the change has been established for the last year of this agreement. Moreover, the 3-1% wage offer by the Town for 2002 is an insufficient *quid pro quo* for such a significant change.

The undersigned is mindful that the comparables undeniably favor some form of contribution by the employees. With the single exception of the Town of Menasha, all of the identifiable comparables require some form of employee contribution. It is not, however, clear whether the employee contributions to the premium by the comparable municipalities were achieved voluntarily or through interest arbitration.

Because, as the Town points out, the external comparables undeniably support some form of contribution and the rise in the cost of health care premiums shows no sign of abating, it is only a matter of time before the employees in this bargaining unit will most likely be required to make some type of monetary contribution towards their health insurance in the future, either through the negotiation process or future interest arbitration. The undersigned only finds that for the duration of this agreement, given the changes that have been voluntarily accomplished, the Town has not carried its burden in establishing the need for the change at this time.

The health insurance issue is also determinative. Having considered all of the factors, set forth in Sec. 111.77(6), Stats., it is concluded that factor h., when coupled with all of the other factors, strongly favors the Union's offer with respect to the health insurance issues. The Union's offer with respect to the health insurance language is preferred.

CONCLUSION:

AWARD

For the reasons set forth above, the Association's final offer is adopted as the award in this proceeding and incorporated into the parties' collective bargaining agreement and incorporated into the parties' collective bargaining agreement effective

Dated this 20th day of May, 2002, in Madison, Wisconsin.

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Mary Jo Schiavoni, Arbitrator