STATE OF WISCONSIN
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE ARBITRATION BETWEEN

North Shore Fire Department,

Employer,

DECISION AND AWARD:
INTEREST ARBITRATION

and

WERC CASE 2 No. 60874 MIA-2450
Decision No. 30481-A

North Shore Professional
Fire-Fighters Local 1440, IAFF,

Union.

ARBITRATOR:	Stephen A. Bard
DATE OF HEARING:	February 4, 2003
PLACE OF HEARING:	River Hills Village Hall, River Hills, Wisconsin
DATE OF MAILING OF POST-HEARING BRIEFS:	March 17, 2003
DATE OF MAILING OF REPLY BRIEFS:	April 7, 2003
DATE OF DECISION AND AWARD:	July 10, 2003

INTEREST ARBITRATION

APPEARANCES:

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INTRODUCTION

This matter came on for arbitration before neutral Arbitrator Stephen A. Bard on February 4, 2003, at 9:00 a.m. in the River Hills Village Hall, River Hills Wisconsin. The Employer (also referred to as the "NSFD") was present with its witnesses and was represented by Mr. Alan Levy. The Union was present with its witnesses and was represented by Mr. Timothy Hawkes. The parties had been certified at impasse under MERA §111.77 (4)(b) for binding final offer arbitration.

Testimony was taken and exhibits were submitted at the time of the hearing, and at the conclusion the parties agreed to simultaneously serve and submit Briefs on March 17, 2003, and Reply Briefs by April 7, 2003. Accompanying the briefs, or submitted at the hearing, were numerous arbitration decisions which were also reviewed by the Arbitrator.

On May 12th the Arbitrator sent a "letter of clarification" to the parties regarding a matter related to the cost of health insurance to the Employer. The parties agreed as to the Arbitrator's understanding of the issue as set forth in his letter, and provided additional information regarding the application of the insurance program currently in effect.

ISSUES

The issues are framed by the parties' Final Offers:

Union's Final Offer:

"Now comes the North Shore Professional Firefighters

Association, Local 1440 and proposes the following with regard to a successor collective bargaining agreement between it and the North Shore Fire Department:

1. Continue the terms and conditions of the prior collective bargaining agreement that expires on December 31, 2001 without change except as modified herein.

2. Article 21 – Insurance. Amend Section 2, Health and Dental Insurance, A., Health Insurance as follows:

> The Department agrees to provide health insurance for employees through the Wisconsin Public Employers Group Health Insurance Program (State Health Plan). The Department agrees to pay one hundred five percent (105%) of the lowest cost health insurance plan available under the State Health Plan in the Department's service area (Milwaukee County) toward the costs of the health insurance plan chosen by the Employee.[1] *Effective January 1, 2002, any employee who elects a plan the cost of which is equal to or less than 105% of the lowest cost health insurance plan available shall pay ten dollars ($10) per month toward the cost of the premium through payroll deduction. Effective January 1, 2003, any employee who elects a plan the cost of which is equal to or less than 105% of the lowest cost health insurance plan available shall pay twenty dollars ($20) per month toward the cost of the premium through payroll deduction. An employee who elects a plan the cost of which is greater than 105% of the lowest cost health insurance plan available shall pay the difference~~, if any,~~ through payroll deduction, and shall not pay less than the amount set out above.*

3. Article 32 – Duration. Amend to reflect a contract period commencing on January 1, 2002 and continuing through December 31, 2003. [Amend such other dates contained in the contract as necessary to accurately reflect the duration.]

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[1] The State of Wisconsin sponsors a health insurance plan for public employees. That plan offers a variety of health insurance options to be selected by the employee. However, no Employer is permitted to pay more than 105% of lowest program offered by the State.

4. Appendix A – Salary Schedules. Increase all rates by 3% effective January 1, 2002 and by a further 3% effective January 1, 2003."

Employer's Final Offer:

"The North Shore Fire Department proposes a collective bargaining agreement with North Shore Professional Fire Fighters Association, Local 1440, IAFF, which will be identical to that to which the parties were bound from January 1, 2000, through December 31, 2001, except for the following changes:

1. The new agreement shall be effective from January 1, 2002 through December 31, 2003.

2. The wage provision (Article 10) shall be modified to reflect the following increases:

Effective January 1, 2002: An across-the-board increase of 3%

Effective January 1, 2003: An additional across-the-board increase of 3.5%

3. The health insurance provision (Article 21, Section 2(A)) shall be modified to reflect the following changes:

Effective January 1, 2002, all employees participating in the program shall pay $20.00 per month of the share of premium payments for which the Department was obligated under the 2000-2001 agreement. This shall be done by pre-tax payroll deduction.

Effective January 1, 2003, all employees participating in the program shall pay $20.00 per month of the share of the premium payments for which the Department was obligated under the 2000-2001 agreement, plus half of any increase in the cost of the Employer share of premium payments as compared to the rates in effect during 2002, but to a maximum combined amount of no more than $75.00 per month. This shall be done by pre-tax payroll deduction."

Comparison of Final Offers

In its Brief, the Employer has charted these respective positions as follows:

	Union		Department	
Year	**Wage Increase**	**Health Insurance**	**Wage Increase**	**Health Insurance**
2002	3%	Employer pays maximum allowed by Wisconsin Plan, minus $10.00 per month to be paid by employee.	3%	Employer pays maximum allowed by Wisconsin plan, minus $20.00 per month to be paid by employee.
2003	3%	Employer pays maximum allowed by Wisconsin plan, minus $20.00 per month to be paid by employee.	3.5%	Employer pays maximum allowed by Wisconsin plan, minus amount equal to $20.00 per month, plus half of 2003 increase in that Employer maximum, but a monthly total of no more than $75.00 to be paid by employee.

RELEVANT STATUTORY AUTHORITY

Section 111.77, Wisc. Stats., identifies the criteria applicable to this proceeding. It provides:

(6) In reaching a decision the arbitrator 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 these costs.

(d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding 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 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.

FINDINGS OF FACT

I. Employer History

The North Shore Fire Department was created in 1995, and has had a bargaining relationship with the IAFF since its inception. This is the parties' first impasse interest arbitration. The lawful authority of the Employer is not in dispute, nor is the cost of living, and there are no stipulations between the parties. In addition, neither party elicited any testimony, offered any evidence or argued that a change of circumstances had occurred during the pendency of the proceedings (Sec. 111.77(6)(g)). The remainder of the statutory criteria on which the Arbitrator is required to base his Decision, and the appropriate evidentiary weight to be given to each of them, are in dispute.

The NSFD is a non-taxing governmental entity formed in 1995 pursuant to provisions 61.65 and 61.30 of the Wisconsin Statutes for the purpose of operating a multi-jurisdictional fire department to serve seven suburban communities north of Milwaukee: The Villages of Bayside, Brown Deer, Fox Point, River Hills, Whitefish Bay and Shorewood, and the City of Glendale. The NSFD staffs five stations[2] and serves a combined population of 68,351. The NSFD currently operates in accordance with an Amended and Restated Agreement updated 07-03-02.

II. Prior Insurance Coverage - The State Plan

The State of Wisconsin provides health insurance benefits to its employees and to the employees of any local government in Wisconsin that elects to participate in State sponsored insurance plans (Wis. Stats. Ch. 40, generally; and, Sec. 40.51(7)). The plan it offers to local

[2] At the time of the merger there were five independent fire departments among the seven

governments is known as the Wisconsin Public Employers' Group Health Insurance Program (hereinafter referred to as "the State Plan"). Since its inception in 1995, the NSFD and the Union have adopted the State Plan to provide health insurance to its employees.[3] (Article 21, Section 2, CBA).

The State Plan involves the annual solicitation from private health providers of bids on various health coverages, including traditional indemnity (i.e., Blue Cross, Blue Shield) policies, HMO policies, and PPP (Preferred Provider Plan) policies, which are then made available to the eligible employees. The Wisconsin Administrative Code allows the Employer to pay anywhere between 50% and 105% of the lowest cost plan available (Wis. Admin. Code, ETF 40.10(2)(b).)[4] The State Plan also makes available the more expensive policy options to the eligible employees, but the incremental cost of the policy premiums are picked up by the employees.

The NSFD contribution has always been set at the 105% level. Neither the Department, nor the Union proposed discontinuing this participation or changing the underlying level of the Employer's contribution for 2002 and 2003. Rather, the issue has been framed as being the level of employee contributions to this premium cost.[5]

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communities.

[3]Four of the five fire department units which formed the NSFD had been in the State Plan prior to 1995.

[4]The parties are in agreement that the lowest cost plan is typically an HMO policy.

[5] The record indicates that the joint labor-management team investigated possible alternative insurance programs prior to the certification of the issues to the Arbitrator, but abandoned the

This sort of managed competition model generally results in lower costs to the employees than might otherwise be available to them both because the bidders are involved in a competitive process which, if successful, will award them with a large pool of potential customers, and because the state plan covers more than 200,000 active and retired state employees, thereby bringing a substantial market share to the table. By making the plan available to local governmental employees, employers with small groups like the 100 employed by the NSFD can take advantage of the leverage usually available only to the largest employers.

Also, because the State Plan covers employees throughout the entire state, those NSFD fire fighters who live in the Dane County (Madison) area, or Brown County (Green Bay) area, can elect health care insurance plans available from the State Plan only in those geographic areas in which they live, each of which has generalized health care costs that are lower than those in Southeast Wisconsin, and therefore charge lower premiums.

Other factors, in addition to geographic location and the selection of more expensive coverage, can effect the amount paid by the NSFD and the employees under the State Plan, both in absolute terms and in relationship to each other. The most obvious of these factors is marital status, as the CBA requires the NSFD to pay for family as well as single coverage. Contributions by employees under the current plan, as well as under the Final Offers, are not directly effected by marital status.

Selection of a particular plan can also affect the level of Employer payments. For

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effort allegedly because of the cost. Union President Steve Tippel testified that he and Chief David Berousek met with health insurance consulting agencies to obtain plan proposals and premium quotes, but that "all plans offered to us were considerably higher in premiums per month than what we were currently paying." (Tr., at 212.)

example, if an employee were to select the basic coverage, the NSFD would pick up 100% of the premium, whereas if the employee selects more expensive coverage the Employer would pay up to *105%* of the cost of the basic coverage towards the more expensive premium, with the employee paying the rest.

The participation and withdrawal of various carriers from the State Plan can also affect the relative contributions of the parties. For example, the Employer has placed great emphasis on the effect of the withdrawal of Family Health Care from the State Plan in 2001. As low HMO bidder, it kept the basic contribution level of the employer relatively low for a number of years. At the same time, a number of employees opted for more expensive coverage, outside of the 105% range, resulting in a significant contribution on a percentage basis by the employees to the premium cost. In 2001, Family Health Care withdrew as a bidder from the State Plan, leaving a more expensive lowest bidder behind, which resulted in a rise in the Employer's contribution. At the same time, dramatic increases in the general cost of health insurance were taking place across the board. Although all of the premiums went up, the percentage disparity between the costs leveled off, so that more of the options fell within the 105% obligation level of the Employer, thereby reducing or eliminating employee contributions altogether.[6]

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[6]Employer Exhibit 10 shows that without additional contributions from the employees in 2002, only 3 of the 79 employees would be making a contribution, one of $323.79 per month for the Milwaukee standard plan, and two of $75.39 for the Prevea option. However, it appears that in 2003 Comp Care - Aurora came in with a low bid plan after the open enrollment period had ended. As a result, Comp Care - Aurora set the floor for the 105% payment formula, but 65 of the 75 enrolled employees had already enrolled in the Humana plan, which was more expensive, thereby resulting in a $24.56 monthly contribution by these employees, and an *increase* in their percentage of the weighted average salary contributed for health insurance from 0.15% in 2002 to 1.81% in 2003 (without regard to the employee contributions proposed by the parties in this arbitration). Four of the eligible employees are not enrolled in any plan; presumably, they receive health insurance coverage through their spouses' employers.

Following the hearing, the parties submitted to the Arbitrator State of Wisconsin Publication ET-2128 (re. 10/2002), "Group Health Insurance Plans & Provisions." As expected, co-pays from participating employees are often required, such as co-payments for brand name drugs, prescription drug out-of-pocket maximums and day supply, and deductibles for emergency room services. These co-pays are the responsibility of the participating employees, and not of the employer. In addition, other coverage changes have taken place, such as lifetime maximum coverages, covered services, etc.

III. Financial Ability of the Employer.

The inter-city compact governing the operation of the NSFD (Restated Agreement, *supra)* provides in Paragraph 5.2 a formula which caps the amount of increase allowable to the Department on an annual basis. The current maximum is 2% over the Consumer Price Index for the preceding fiscal year.

The North Shore communities serviced by the NSFD are located north of Milwaukee in what can fairly be described as an extremely affluent area of the State. The equalized property value of the North Shore communities, excluding the exclusive property of River Hills, is approximately $5.3 billion. In contrast, the three nearby communities of Wauwatosa, Waukesha and West Allis - the comparables proposed by the Union - rely on a property tax base that ranges from $2.9 billion to $3.5 billion to support the cost of their fire departments. The NSFD has no direct taxing authority. It receives all of its funding from its constituent communities. The average property tax rate for those communities is $6.90 per thousand, compared to $9.05, $10.33 and $10.41, in Waukesha, West Allis and Wauwatosa, respectively. The actual year 2000 budget for the NSFD was $10,046,171.

The budget for 2001 was $10,154,959 and for year 2002 it was $10,759,543. Of those amounts, total personnel related expenses were, respectively, $7,539,828 and $8,414,300.

As the basic contribution toward health insurance by the employer remains the same in both proposals (105% maximum of premium for least expensive State Plan policy for both years 2002 and 2003), the difference in cost between the two proposals is the level of employee contributions toward the purchase of insurance. In 2002, actual total employee contributions toward the purchase of insurance would be $14,815 under the Union proposal and $24,655 under the Employer's proposal, a difference of $9,840. The Union calculated the difference at approximately $12,000.

For year 2003, the Employer's proposal capped employee contributions at $75.00, and with the benefit of hindsight we know that the cap would be met. The actual employee contributions toward the purchase of insurance would be $24,894 under the Union proposal and $69,536 under the Employer's proposal, a difference of $44,642. The Union calculated a total difference of approximately $72,000. After backing out the differential of $22,000 more in wages paid under the Employer's proposal, the total difference for the two years, according to the Union, is approximately $62,000, and only $32,482 according to the Employer's calculations. According to the 2003 budget, capital outlay was set at $512,408 compared to $809,144 in 2001, the number of battalion chiefs was reduced from $309,351 in 2000 to $255,909 in 2002, and non-unit salary expenses went down $24,000 between 2001 and 2003. At the same time, health insurance costs have increased by 21%.[7]

[7]This figure is calculated by measuring the increase between the actual Employer health care contribution for 2001 and 2002 as measured by the current CBA formula.

Robert Brunner, director of the NSFD testified that the construction of a new station in Bayside has been deferred, that the Department lacked sufficient funds to meet its capital funding requirements and that plans to train more firefighters for paramedic certification have been delayed for lack of funds. He also testified that in 2002 the Village of Brown Deer loaned the Department the funds to meet its December payroll because the Department had run out of cash.

During the hearing, the following Q & A took place between Union counsel and NSFD Fire Chief Berousek:

> Q. Is there enough money to cover the – the Arbitrator's decision regardless of which way it goes?
>
> A. Yes, sir.
>
> Q. And that's true for health insurance and for salaries?
>
> A. Yes. (Tr. at 144)

During the past several years health insurance costs nationally have increased at levels far above the cost of living increases reflected by the Consumer Price Index and the Milwaukee area increases have been half again those amounts. In 2002 the cost of family coverage in Milwaukee went up 26.2% while the CPI rose only 1.2%. The Employer notes that as a result of this trend the 1997 employer cost was $383,373; in 2001 the Employer paid almost twice the 1997 cost, $672,312. If the Department's offer is accepted for 2003, it will pay $852,933.

III. Comparables of "other employees performing similar services." and 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. Sec. 111.77(6)(d)) and (f).

There are no previous arbitral findings determining an appropriate set of externally comparable wage and benefits data for the purpose of applying the Sec. 111.77(6)(d) criterion, *supra*. The Employer has taken the position that this unit is *sui generis*, and that little, if any, weight should be given to comparables. The Union's position is that only firefighters perform similar services to other firemen:

> Fire fighters are to be compared with fire fighters, bridge tenders to bridge tenders. The sense of this is readily apparent when one examines the unique work life of the fire fighting occupation. Fire fighters work one 24 hour shift every 72 hours. As a result they work 2,920 hours in a year, unlike the 2,080 hours worked by most civil servants. They are subject to emergency response even when off-duty. They work at great personal risk. They are trained emergency medical technicians (some as paramedics) and shoulder the responsibility of decisions that may make a life or death difference to the communities' citizens.
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> Union Brief, pp 11-12.

The Union contends that its offer must be considered in comparison to other fire departments, particularly those of Wauwatosa, Waukesha, and West Allis, Wisconsin, all of which are geographically close to the North Shore Communities.[8] Scott Gonwa, who has served on the Union's negotiating team for each round of bargaining since the inception of the

[8] The Union also has provided what it refers to as a second tier set of comparables consisting of other Milwaukee County fire departments, as well as of the police departments in the constituent North Shore Communities. Its position is that these units "can serve as a double check against conclusions drawn by comparison with the primary comparables." These comparables are useful in the sense that they allow the Arbitrator to look at what is occurring elsewhere in Wisconsin. On the other hand, their inclusion makes for a highly complex analysis with questionable additional benefit, since either there are comparable units or there are not. These other units are not comparable in size,

Department in 1995, testified that in prior bargaining these three communities were used for comparison purposes:

> Q. And during the time of negotiations, and generally, what has been the position of the Employer with regard to what are the appropriate comparables for the purpose of negotiations?
>
> A. In the – In the past we've always referred, both sides, have referred to our comparables as the three W's: Wauwatosa, West Allis, and Waukesha.
>
> Q. What has been the position—When you say, "we," do you mean the Employer?
>
> A. Both. Both the Union and the Employer has always somewhat agreed to that in past negotiations as well as this current bargaining session.
>
> Q. What was the dialogue that occurred at that meeting [October 20, 2001—the third session of this round of bargaining] with regard to this question?
>
> A. There was a dialogue about the seven community consolidated Department. A statement made by Mr. Thomas [a member of the Department's bargaining team] that, "There are no other seven community consolidated Departments." I think at that time there was – there was discussion back that we've always agreed upon a certain set of comparables.
>
> Q. What did Mr. Harris record me as having said?
>
> A. You said, "But there are other 100-plus member Departments with three to five stations: West Allis, Waukesha, and Wauwatosa."
>
> Q. And what was Mr. Levy's [attorney for the Department] comment?
>
> A. Mr. Levy's comment was, "We've always—We've always base-lined on the three W's: West Allis, Waukesha, and Wauwatosa."

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work performed, geographic location, etc., and therefore their data are not discussed below.

(Tr., at 241-243)

The population sizes of the communities served by the four departments are similar - the NSFD serves a population of 68,351; Waukesha--66,237; West Allis--61,114 and Wauwatosa—46,930. Other communities in geographical proximity to the North Shore communities, *as an aggregate,* have populations that vary widely from this range: Milwaukee's is nearly eight times larger at 595,508, Greenfield's, the next smaller community, is approximately half of the North Shore with a population of 35,776, and the remaining seven suburban units have at most about 1/3rd the population of that served by the NSFD.

The size of the bargaining units in these three communities closely correspond to the NSFD. As compared to the NSFD's 105 employees, Wauwatosa has 105, West Allis has 113, and Waukesha has 84. The remaining seven Milwaukee County suburban fire departments range in size from one-half to one-tenth of the NSFD.

The NSFD staffs five stations whereas the other three staff either three or four stations. The smaller communities staff between one and three stations each. All four communities provide paramedic services, whereas three of the remaining suburban departments do not. Financial data comparing the communities property tax based are discussed above.

All three communities have settled contracts, and none participate in the State Plan. The following wage and insurance benefit data among these Union comparables for years 2001, 2002 and 2003 are taken directly from Union Exhibits 404, 500 and 502[9].

[9]Certain discrepancies in the data were noted by the Arbitrator in the Union Brief in regard to increases in *combined* wage and benefit data. None of the Employer exhibits contained a

A. **Wages.** In 2001, top step fire fighters in the cities of Waukesha, Wauwatosa, and West Allis were paid, respectively, annual wages of $48,188, $50,183 and $48,479. The mean wages were $48,950 compared to $48,173 for fire fighters in the NSFD, a difference of $777, which is 1.6% below the mean. In 2002, the wages in the three comparable communities were raised, respectively, 3%, 3.4% and 3%, an average wage increase of 3.13%, and a mean wage of $50,607. Both parties have agreed to a 3% wage increase for 2002, which results in a top wage of $49,618.00, which is $988 and 1.96% below the mean.

In 2003, the wages in the three comparable communities were raised, respectively, 2.95%, 3.4% and 3%, an average wage increase of 3.1%, and a mean wage of $52,204. The Union's proposal would raise wages an additional 3.0% in 2003, which would result in a top wage of $51,107.00, which is $1,097 and 2.1% below the mean. The Employer's proposal would raise wages an additional 3.5% in 2003, which would result in a top wage of $51,355.00, which is $849 and 1.7% below the mean.

B. **Total Compensation.** In 2001, top step fire fighters in the cities of Waukesha, Wauwatosa, and West Allis were paid, respectively, total compensation packages[10] of $50,943, $53,209 and $51,852. The mean package was $52,001 compared to $50,134 for fire fighters in

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breakdown of the various compensation factors as they appeared in the cited Union Exhibits. Since the basic Union data were not objected to, the Arbitrator will assume their accuracy. However, the Arbitrator has recalculated the data on a combined basis - wages, total compensation, and wages and health insurance combined.

[10]These data do *not* include health or other insurance benefits. They include base salary, longevity pay, shift differential, uniform allowance and holiday pay. The scheduled hours worked in the three communities is identical except for West Allis, which works 8 hours less per year. For purposes of this analysis this differential has a *de minimis* effect.

the NSFD, a difference of $1,868, which is 3.6% below the mean. In 2002, top step fire fighters in the cities of Waukesha, Wauwatosa, and West Allis were paid, respectively, total compensation packages of $52,455, $55,398 and $53,223. The mean package was $53,692 compared to $51,626 for fire fighters in the NSFD, a difference of $2066, which is 3.8% below the mean.

In 2003, the top step fire fighters in the cities of Waukesha, Wauwatosa, and West Allis were paid, respectively, total compensation packages of $53,987, $57,332 and $54,919, a mean package of $55,412. Under the Union's proposal, the 2003 total compensation package would be $53,163 which would be $2,249, or 4.0% below the mean. Under the Employer's proposal, the 2003 total compensation package would be $53,420 which would be $1,993, or 3.6% below the mean.

C. **Health Insurance**. None of the Union comparables participate in the State Plan, and with the exception of West Allis, none require employee contributions toward health insurance.[11] In 2001, fire fighters in the cities of Waukesha, Wauwatosa, and West Allis,

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[11]On p. 17 of the Union Brief, West Allis data duplicated from Un. Exh. 500 is referred to as representing "the employer *obligation* for family coverage (*offsetting* employee contribution in West Allis)..." (e.a.). This data represents the monthly employer "obligation" toward family coverage in 2003 in West Allis as being $1372.14 per month . However, on page 64, ll. 5-6 of the court reporter's transcript of the hearing, counsel refers to the employee contribution in West Allis as being "5 percent of the *premium* of 1283....", the same figure which appears on Exhibit 500. The reference to employee contributions is only footnoted on Exhibit 500, which purports to chart the comparables based on "2001 Family *Premium" (e.a.),* and the footnote does not indicate that the figures in the chart represent *net* employer obligations. The Arbitrator therefore concludes that the figures appearing on Exhibit 500 for the City of West Allis, as well as the other communities, refer to *actual premiums*, not *net contributions* of the employers. For purposes of simplicity, the Arbitrator has netted out the employee 5% contribution in West Allis from the data appearing above, which therefore attempts to represent actual *employer* liabilities without reference to *employee* obligations.

In regard to the data related to Wauwatosa, the Arbitrator agrees with the Union characterization of the employees' obligation which appears on page 8 of its Reply Brief :

> " A representative provision of the Wauwatosa contract (Union Exh. 301, at 10) reads:
>
> > 'The co-insurance for services provided by PPO members shall continue to be computed on the basis of 90% paid by the plan and 10% paid by the employee, until the employee's portion of the co-insurance is met.'
>
> It appears that the Department treats this provision as similar to its own proposal to require an increased employee contribution toward the cost of the premium. Nothing could be further from the truth. The provision cited above is commonly referred to as an "out-of-pocket" maximum, and it means that when under the terms of the insurance plan, the employee must cover a portion of the cost of drugs or medical services, the employee's exposure is limited to a certain sum. There are several critically important differences between such a concept and the premium co-payment at issue in this case. The first is that it is paid as a function of the use of medical services and purchase of drugs. If the employee doesn't use them, then the employee pays *nothing*. A premium co-payment must be paid by the employee, *regardless of the employee's use of medical services or drugs. The second is the practical implication of the Wauwatosa contract provisions. An employee who elects to participate in the PPO pays 10% of the cost of services as they are consumed up to a maximum of $1,200 per year if covered under a family plan. This means that the employee would not have to pay $1,200 unless the total family use of medical services exceeded $12,000!* Common sense and experience inform us that most families incur substantially less in the typical year—so the employee's actual expenditure under the Wauwatosa provision is substantially less. The third is that this type of provision protects the employees. There are co-pays and deductibles under several of state plan options elected by North Shore employees (see the recently increased drug co-pays unilaterally implemented by the state as one example)—but there is no out-of-pocket maximum limiting the employee's exposure. In certain circumstances, if the Wauwatosa provision was implemented in the North Shore, it would be increasing an employee benefit, not decreasing the employer's cost. Obviously, the determination of whether it would be a net increase or decrease requires many more facts than the Department offered into this record."

It is important that the parties distinguish between a *co-pay,* which refers to payments required of all plans' participants (for costs which can vary from drug co-pays to annual deductibles, co-pays for emergency room services, office visits, and so forth), *and required employee contributions towards premium costs.* Confusing or commingling the two would create an almost impossibly complex task for an arbitrator, and for the reasons given by the Union the two are not comparable. The Union is also correct when it notes that such provisions are generally designed to protect employees, not employers, from excessive costs. There also is no doubt that the NSDF employees are responsible for all co-pays,

respectively, received annual net contributions toward the payment of health insurance premiums as follows: $3,334.44(S) and $10,636.44(F); $5,013.84(S) and $12,133.32(F); and $4,385.58(S) and $12,258.42(F). In 2001 NSFD fire fighters received up to $3,558.24(S) and $8,865.36(F). The mean among Union comparables was $4,244.62(S) and $11,676.06(F). In 2001 NSFD members therefore received $666.38 or 18.7% less than the comparable mean(S) and $2,810.70 or 24.1% less than the comparable mean(F).

In 2002, fire fighters in the cities of Waukesha, Wauwatosa, and West Allis, respectively, received annual net contributions toward the payment of health insurance premiums as follows: $4,047.96(S) and $12,657.84(F); $6,346.56(S) and $15,358.68(F); and $5,152.80(S) and $14,945.40(F). The mean among Union comparables was $5,182.44(S) and $14,320.64(F). In 2002 NSFD fire fighters have been offered by the Employer a net annual contribution up to $4,098.24(S) and $10,573.32(F), and the Union has proposed a net annual contribution up to $4,338.12(S) and $10,813.32(F). In 2002 NSFD fire fighters would therefore receive $1,084.20 or 20.9 % less than the comparable mean(S) and $3,747.32 or 26.2 % less than the comparable mean(F) under the Employer offer, and $844.32 or 16.3% less than the mean(S) and $3,507.32 or 24.5% less than the comparable mean(F) under the Union proposal.

In 2003, fire fighters in the cities of Waukesha, Wauwatosa, and West Allis, respectively, received annual net contributions toward the payment of health insurance

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and to that extent they do contribute to the cost of insurance even if they opt for the cheapest coverage. *Those co-pays have been disregarded by the Employer in its analysis*, and it would therefore be inapt to consider copayments made by fire fighters in Wauwatosa. The Union has waived the right to bargain for any particular coverage in exchange for a fixed formula approach to insurance contributions. This means that the Union members have no protection, or cap, should the basic HMO coverage chose to increase deductible charges and co-payments, and the risk of these costs have been totally assumed by Union members. For these reasons, employee co-pay obligations in comparable units have been

premiums as follows: $4,428.24(S) and $13,847.04(F); $6,804.00(S) and $16,465.68(F); and $5,112.00(S) and $14,631.33(F). The mean among Union comparables was $5,448.08(S) and $14,981.35(F). In 2003 NSFD fire fighters have been offered by the Employer a net annual contribution up to $4,038.24(S) and $11,356.13(F), and the Union has proposed a net annual contribution up to $4,804.08(S) and $12,136.08(F). In 2003 NSFD fire fighters would therefore receive $1,409.84 or 25.9% less than the mean(S) and $3,625.22 or 24.2% less than the comparable mean(F) under the Employer offer and $644 or 11.8% less than the mean(S) and $2,845.27 or 19 % less than the comparable mean(F) under the Union proposal.

D. **Combined wages and health insurance.** When combined, the wage and health insurance (Family coverage) package for 2001 for NSFD fire fighters was $57,038.36. When combined, the wage and health insurance package (Family coverage) for 2002 under the Union proposal is $60,431.32, and under the Employer's offer is $60,191.32. The combined package for 2003 (Family coverage) under the Union proposal is $63,243.08, and under the Employer's offer is $62,710.96. In 2001, the Union comparables mean for combined base wages and health insurance (Family coverage) was $60,626.06. In 2002, the Union comparables mean was $64,927.64. In 2003, the Union comparables mean was $66,051.04.

Both offers leave the employees in the unit receiving increases in combined wage and health insurance benefits which are below the comparable mean. In 2002 the discrepancy is $4,496.32 (Union Final Offer) and $4,736.32 (Employer Final Offer). In 2003, the discrepancy is $2,807.96 (Union Final Offer) and $3,340.08 (Employer Final Offer). In 2001 the NSFD package was 94.1% of the comparable mean. For 2002 the Union proposal is 93% of the

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disregarded in connection with the data appearing above.

comparable mean and the Employer offer is 92.7% of the mean. For 2003 the Union proposal is 95.8% of the comparable mean and the Employer offer is 94.9% of the mean.

POSITIONS OF THE PARTIES

Employer's Position. The Employer's position is based on its contention that it has become necessary for the unit members to increase their proportional contribution to the purchase of health insurance. To achieve this goal the Employer has proposed a wage increase that matches the Union's in 2002, and actually exceeds it by 0.5% in 2003. In support of this position it notes that when the parties' first contract was renegotiated in 1997 the average cost to the NSFD for an employee with family coverage health insurance was $437.64 per month, which was 12.25% of the salary for a fifth year (top rated) firefighter. In 2001, however, when the parties began negotiating for the contract now at issue, those figures were $700.32 and 17.45%, respectively. Depending on the offer awarded by the Arbitrator, those numbers will be between $1,008 and $947.70 and between 23.67% and 22.14% for 2003.

The Employer further notes that during the same period the share paid by an employee for health insurance decreased by three-quarters, or from 1.2% ($43.03 per month) in 1997 to .31% ($12.34 per month) in 2001. It points out that the .65% share ($27.66 per month) contribution under the Union's 2003 offer and the 1.81% ($77.26 per month) under the NSFD offer[12] are both substantially less than the 26% to 27% of premium contributions which 73% to

[12]The parties and the Arbitrator have the luxury of hindsight in regard to the 2003 insurance rates, which would reach the cap of $75.00 per month employee contribution proposed by the Employer.

92% of Midwest employers required of their employees in 2001.[13] The Employer contends that the current disproportion in employee contributions is based in large part on the fact that the employees "have enjoyed a windfall" due to the absence of the Family Health Plan, a less expensive competitor which ceased operation in 2001.[14] The Employer argues that its offer is reasonable by noting (1) an additional one-half percent increase in 2003 wages vis-a-vis the Union's proposal and (2) the disparity in increases in health insurance costs vis-a-vis the parties during the past six years.[15]

The Employer makes a number of factual allegations which it contends supports its claim that an Award of its offer, which allegedly attempts to restore to some extent *the status quo ante*, is more appropriate and "must be made on factors other than traditional comparisons."

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[13]According to the Employer, Government employees typically pay a slightly higher share than that as compared to those in the private sector.

[14]The Employer apparently is contending that the withdrawal of Family Health Plan, the low bidder to which its contributions had been pegged, caused an increase in the Employer's contribution, now pegged to a new *more expensive* "low bidder." As the Arbitrator understands it, most employees had been purchasing a plan somewhat more expensive than Family Health, which they viewed as superior and affordable. However, they had to pay for the difference in the cost of that plan and 105% of the cost of the Family Health Plan. With the withdrawal of the Family Health Plan, that cost (and that of other plans as well) now came within the parameters of the Employer's new 105% contribution, thereby reducing the employee contribution, and thereby changing the proportional contributions of the parties. The Employer views this as a "windfall" to the employees.. Tr. 157-158, 163-164.

[15]The average employee is being asked to pay $35 per month more than he/she did in 1997 for health insurance, $17 per month more than in 2000 and $22 more than in 1998. This is to be compared with a 1997-2003 (Department offer) increase of $510 and a $707.58 monthly wage increase for the same period. The Employer argues that the additional one-half percent wage increase offered by the Department ($20.67 per month) more than pays for the $17.00 per month increase since 2000.

(Emp. Br. p.12):

1. *Health insurance costs increased in the Milwaukee area 26.2% in 2002, and since 1997 the increases have been two to twenty times CPI increases during this period:* "To deal with this extraordinary circumstance, most employers have required employees to pay one-fourth to one-third the insurance premium..." Emp. Br., p. 12.

2. *No Other Employer Is Sufficiently Like The NSFD To Constitute A Valid Comparison By Which To Evaluate The Offers.* Although the statute calls for a comparison to "other employees performing similar services… in comparable communities," Sec. 111.77(6)(d), the unique governance of the NSFD prevents significant "weight" being given that analysis. There is little precedent for the treatment of such an enterprise pursuant to the statute, but the few relevant decisions all minimize the weight given to comparisons and focus on other criteria for evaluating the parties' offers. [arb. cit. om.]

The lack of rational comparison to other fire departments allegedly is manifest by the NSFD's governance, financing, and composition. The NSFD is the only fire protection agency in the area which serves seven autonomous communities. It is the only employer which has no independent taxing authority to raise funds for its labor costs, no independent borrowing power and no ability to seek grants as can municipalities. The NSFD charter limits the growth of its budget, and any variance from that system requires approval by not one, but at least five different governing municipal bodies. Every municipal employer to which the Union has sought comparison, whether a fire or police department, has more flexibility and resources with which to meet a union bargaining demand. Therefore, the NSFD is not comparable to West Allis, Wauwatosa or Waukesha because it is a captive of the seven single communities which,

in turn, each finance their operations through tax dollars, grants, and borrowing not available to the NSFD.

Furthermore, comparisons to other regional agencies are equally imperfect. The Milwaukee Metropolitan Sewerage District serves a dozen and a half municipalities, has an appointed board, but also has taxing authority and sets its own budget without external limits like the NSFD charter. The North Shore Health Department serves five of the NSFD constituent communities, has an appointed board, but has only a few employees, all of whom are nurses and none of whom have union representation. Each North Shore police department and each South Side fire department is a portion of an independent municipality which can tax, borrow, increase its budget, and seek grant supports just as the "three W's," and all in ways unavailable to the NSFD.

Arguing in the alternative, the Employer notes that every North Shore police department requires employee insurance contributions ranging from $20.00 to 15% of the premiums each month. It also notes the employee contribution required by Arbitrator Petrie in *Village of Fox Point*, No. 60729 (2002), a public works arbitration. The Employer next contends that the West Allis Fire Department requires an employee contribution of as much as $100 per month, and that Wauwatosa's fire department has endured layoffs, reduced staffing, and periodic shut-down of a ladder company to satisfy its budget needs, and has still added a requirement that its employees "co-pay" up to $1,200 per year for their health insurance.

3. *The increased cost of health insurance is effecting the "interests and welfare of the public and the financial ability of the unit of government to meet these costs," §111.70(6)(c), Wis. Stats.* The NSFD – the "unit of government" – is "out of lock-step" in the

context of this statutory requirement with departments which have a different form of governance. As wages are the largest part of the budget, and have always exceeded CPI increases, department resources have been pressed to meet payroll; citing reduced capital purchases and loans.[16] The Employer argues that if 2004 health insurance costs go up at the same rate as they did in 2003, that there would be an increase of $160,000, which is 1.5% of the entire annual budget; that is the "entire amount of new money" available from changing the budget formula from CPI plus ½% to CPI plus 2%. The Employer also contends that although the parties discussed alternative health insurance programs, the Union declined to pursue them.

4. *Requiring a fair, controlled contribution from all employees gives them a stakeholder's interest in cost containment.* Only requiring a significant payment by all employees will bring cost control to the attention and concern of the people who use this insurance, noting that the withdrawal of Family Health as the low cost competitor removed any significant employee contributions:

> Then the cost factors changed so employees could have virtually any state offered health insurance option at no cost to themselves, Id., and the Union still made no proposal to change carriers or programs. Why should the IAFF propose a move to less expensive insurance or less quickly escalating costs, when its members had at stake only $25.26 per month....?
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> Emp. Br., p. 17

By requiring employee payment toward even the least expensive health insurance, the

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[16] In 2002 the Village of Brown Deer had to lend the Department the money for its December payroll because the Department had run out of cash. "Capital outlay" in the 2003 budget was set at $512,408, compared to $809,144 in 2001, the number of (management) battalion chiefs was reduced ($309,351 in 2000 to $255,909 in 2002), and non-unit salary expenses went down $24,000 from 2001 to 2003.

Department hopes to create a sense of immediacy and ownership among the users of the product; in turn, this should lead to more effective joint efforts at seeking alternatives and improvements for the system.

5. *The Employer's proposal of an increase in employee contribution to health insurance and a larger base wage increase in 2003 would constitute a sufficient quid pro quo:*

> In this connection, it is noted that certain long term and unanticipated changes in the underlying character of previously negotiated practices or benefits may constitute significant mutual problems of the parties which do not require traditional levels of *quid pro quos* to justify change [citing *Algoma School District*, No. 46716 (Petrie, 1992), p. 25]. In the case at hand, the spiraling costs of providing health care insurance for its current employees is a mutual problem for the Employer and the Association, and the trend has been ongoing, foreseeable, anticipated, and open to bargaining by the parties during their periodic contract renewal negotiations. In light of the mutuality of the underlying problem, the requisite *quid pro quo* would normally be somewhat less than would be required to justify a traditional arms length proposal to eliminate or modify negotiated benefits or advantageous contract language. Arbitrator Petrie in *Village of Fox Point*, Id., pp. 19-21.

Thus, an employer's offer of higher wages and benefits than sought by the union – even though less than the cost of insurance the employer sought to have paid by the employees – was sufficient to support a finding in its favor: "Whether or not employees receive an increase in total compensation as high as they seek, the crisis of health insurance costs requires that both parties accept a program different than automatic perpetuation of averaging among allegedly comparable units." Emp Brief [cit om].

Union Position. The Union contends that its final offer regarding the employee contribution to the cost of health insurance recognizes the Employers' demand for increased employee participation, but in an *amount* that is appropriate to the unique design of the

managed competition model provided by the State Plan. In contrast, it alleges that the Employer's final offer exceeds that of any comparably situated employer; fails to account for the fact that the managed competition model provides significantly lower premium costs and already requires employees who elect more costly health care plans to make significant contributions to toward the premiums; and fails to provide an appropriate *quid-pro-quo*.

In support of this position, the Union argues as follows:

1. *The flat dollar contribution proposed by the Union is employed by nearly all comparably situated employers* (to the extent that the employees make any contribution), whereas the Employer's proposed employee contribution (50% of the increase with a cap of $75) enjoys no support from any comparable group and is difficult, if not impossible, to accurately assess with regard to individuals as a consequence of the plan design.[17]

2. *The Union proposal does not significantly affect the interest or welfare of the public or "the financial ability of the unit of government to meet these costs."* (Section 111.77, subd. (6)(c),Wisc. Stats), citing the testimony of Chief Berousek that the Employer has sufficient assets to fund either proposal.

3. *The most comparable communities for the purpose of applying Sec. 111.77(6)(d) are Wauwatosa, West Allis and Waukesha—the three "W's*." The primacy of these comparables has been established by the parties themselves during the course of their

[17]The Union argues that it is unclear if the employee contribution is group based or individual based. For instance, if individual based, an employee who marries, divorces or moves, would have a different employer contribution than in the preceding year, and therefore his or her contribution would be proportionally different to the extent that the employee contribution could actually outweigh the reduction in the employer contribution caused by the change in the employee's circumstances.

negotiating history. This practice should not be lightly disregarded because to do so would upset the balances struck by them in their contract; balances which are premised in part by reference to the terms of the fire fighter collective bargaining agreements in the three "W's".

4. *Comparison to fire departments in the "three 'Ws'" conforms to the statutory requirement that the employees' wages, hours and conditions of employment be compared to those "of other employees performing similar services*." (Sec. 111.77(6) (d), Stats.

5. *Comparison to fire departments in the "three 'Ws'" conforms to the statutory requirement that the comparison be made with employees in "comparable communities."* Citing Arbitrator Malamud in *Town of Caledonia*, WERC Dec. No.29551-A, 1999, the Union contends that the determination of comparability is based on factors such as the relative size of the communities, the size of the particular department and classification of the employee subject to the arbitral comparison, the tax base in place to support the operation and payment of personnel of the department, the urban or rural character of the community served. The Union notes the comparability of the "three 'Ws'" to the NSFD on each of these bases - population, unit size, geographic proximity, services provided, number of physical facilities, and equalized property value.

6. *The State Plan already confers substantial economic benefits upon the Employer rendering the scope of its employee premium contribution demand unreasonable.* The Union notes that although there was an interest in exploring insurance alternatives, the joint labor-management team that investigated them abandoned the effort because all alternatives were

prohibitively expensive.[18] In contrast, the cornerstone of the State Plan was to set employer premium contributions at 105% of the HMO rate—this meant that if unions representing local governmental employees agreed to the State Plan at the bargaining table, its members, who were more likely than not enjoying traditional indemnification plan freedom with little or no employee premium co-payment, would begin to incur a substantial premium co-payment obligation. And, since local governments that subscribe to the State Plan are not free to change the plans' specifications that are determined by the Wisconsin Department of Employee Trust Funds, unions that agree as part of the bargaining process to participate in the state plan effectively lose the opportunity to bargain improvements, or even modifications, to the benefits covered by their members' health insurance coverage.

Comparison of the health insurance premiums between those paid by the North Shore Fire Department and those paid by the Cities of Wauwatosa, West Allis and Waukesha provide the amount saved by the Department. None of the core comparables participate in the State Plan. The employer obligation for family coverage, (offsetting employee contribution in West Allis) is:

Table 1

	Monthly	Annually
Wauwatosa	$1,372.14	$16, 465.68
West Allis	$1,283.45	$15,401.40
Waukesha	$1,153.14	$13,837.68

[18] In this regard Union President Steve Tippel testified that he and Chief David Berousek met with health insurance consulting agencies to obtain plan proposals and premium quotes, but that "all plans offered to us were considerably higher in premiums per month than what we were currently paying." (Tr. 212).

Mean	$1,269.84	$15,238.08	
NSFD	$1,011.34	$12,136.08	(Exhibit 500)

The Union notes that even if *no* change were made to the 105% cap, the Department will spend $1,580 less per year per family health insurance plan than the employers in the most comparable communities. Under the Union's final offer the Department's savings increase by another $240 to $1,820 per family plan, but under the Department's final offer its comparative savings jump to $2,420 per family plan. The Union notes that these savings in each of the last four years far exceed the scope of the Department's demand in this case--$2,400 per employee in savings attributable to the plan design, compared to the $900 more it hopes to win by additional employee contribution toward the premium.

7. *The Employer proposal does not provide a reasonable quid-pro-quo.* In Wisconsin, the proponent of a change in a final offer proposal which substantively changes the *status quo* of the parties must clearly 1) establish the existence of a serious problem; 2) establish that the proposed change reasonably addresses that problem and is supported by the comparables; and 3) demonstrate that the proponent has provided an appropriate *quid-pro-quo in exchange for the substantial benefit change*.

For the reasons set out above, the Department realizes a huge advantage over its core comparables ($310,817 in 2002 and $258,092 in 2003) as a result of the Union's agreement to require its members to participate in the State Plan. The Department cannot point to single comparable to support its position that the amount of employee contributions toward health insurance premiums is a function of their increase from year to year, or which requires its employees to contribute $75 per month in 2003 toward the cost of premiums.

Although the Union agrees that there is a problem that requires redress - as a consequence of which it has proposed for the first time an employee premium contribution and exercised restraint with regard to its proposed salary increase - it disputes that the Employer's proposal reasonably addresses the problem. The Union has already provided the Employer far more relief than any of its core comparables, two of which, despite affording their members conventional health insurance benefits at the cost of much higher premiums, do not require any employee contribution toward the premiums.

Next, the Union argues that the underlying problem is the inflation of health care cost, and that increasing employee premium co-payments will not decrease health care cost inflation: "To the contrary, people who pay more for their premiums have a greater economic incentive to use health care. If anything this approach is likely to make the inflationary spiral worse, not better." Un. Br. p.19.

Even if the Arbitrator were to define the problem solely as the rate of increase of this Employer's contributions for its employees' health care premiums, there is no evidence in this record to demonstrate why the more reasonable contribution would be an additional $900 employee contribution per year.

> It further contends that there is no adequate *quid pro quo* for the Employer's proposal: Compare the salary increase proposals to the total package cost results. In 2002 the Union proposes a 3% wage increase, but the total package increases 1.2% more than that. The sum of the changes in all fringe benefit costs, (including changes internal to the State Plan, that drove all employees 2003 contributions up over 2002, and changes within the Department by employee shifting from one plan to another) defines the cause. By offering to cover $120 per year toward the cost of health insurance, the Union covers approximately .2% of the total package consequence of the net increase in fringe benefit

> costs ($120/$71,000). Because the total difference is about 1.4% (4.4% less the 3% salary increase) the Union, in the first year it has proposed to require an employee contribution covers about one-seventh of the difference. By combination of plan changes and an additional $120 employee minimum contribution in 2003 the Union's offer makes up all but .7% of the net increase in fringe benefit costs (the Union proposes a 3% salary increase, whereas the total wage and benefit increase is .7%). Because the Union held its salary increase to .5% less than the Department's proposal, its final offer presents only .2% greater total package, total bargaining unit cost than the Department.
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> But notice the significance of the employer's proposal—in 2003 its proposed salary increase (3.5%) equals the total package cost increase (3.5%). In essence, the Department passed the entire net fringe benefit increase on to the employees. The Department by focusing exclusively at the bargaining table upon the percentage increase in its contribution to family health insurance premiums, lost sight of what was happening as a result of change in the State Plan, failed to understand (or perhaps only to articulate) the significance of what was happening to employees who take single coverage and failed to reconcile the impact of change in other fringe benefits on the total compensation package.
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> Un. Br., pp. 21-22

8. *The salary proposals ought not to determine the outcome of this case.* The Union proposed a salary increase of 3% in the 2003, the Employer 3.5%. As Union Exhibits 400 through 407 reflect among the primary comparables, it proposes an increase slightly more than the 2.95% increase in Waukesha, the same as the increase for 2003 in West Allis, and slightly less than the 3.4% increase in Wauwatosa. It is also slightly less than the mean increase among the three W's of 3.1%. The point here is that both the Union's and the Employer's proposals are well within the range of reasonable increases when the term reasonable is defined by voluntary settlements reached by similarly situated employees and communities. The point here is also that the Employer's proposal is not outside of the range in a way sufficient for it to

justifiably claim the increase as a *quid pro quo* in exchange for its onerous employee contribution for health insurance premiums in 2003.

DISCUSSION

There obviously is a great deal more at stake in this dispute than the differential in cost of the two proposals for years 2002-03 could possibly justify, as the total transactional cost of litigating this dispute through arbitration certainly exceeds the differential in cost for year 2002, and likely will make a significant dent in the 2003 differential as well. The net cost differential of the proposals for the two years is at most $62,000, hardly worth the time and effort of arbitration if only the contract years are being considered.

For the same reason, the Employer cannot legitimately raise an affordability argument for years 2002-03. Not only has the fire chief acknowledged that there are sufficient funds to meet the requirements of either proposal, but one can hardly contend that $62,000 over a two year period would make a material difference in a capital budget of several hundred thousand dollars a year, or in an overall Department budget of approximately $10,000,000 per year. In this context, the cost *differential* for the two year period, if not the *aggregate* cost, is *de minimis*.

However, that analysis does not adequately address the concerns expressed by the Employer in regard to either the total or the escalating cost of health insurance or in regard to its long term effect on the budgeting process. Section 111.77, subd. (6)(b), Wisconsin Statutes, (the "Statute") requires the Arbitrator in reaching a decision to give weight, *inter alia,* to "(c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs." The Employer has contended, or at least implied, that this provision requires

(or permits) the Arbitrator to give substantial deference to the longer term effects of the cost of health insurance on the overall budgeting process. This problem is so critical, according to the Employer, and the legal structure of the Employer is so unique, that the Arbitrator of necessity must give little, if any, weight to current budgeting considerations or to the comparable wage and benefit data "of other employees performing similar services...in public employment in [allegedly] comparable communities."

Despite the fact that the Arbitrator is *required by law* to weigh these factors, (and despite the fact that a traditional analysis of these factors supports the Union position - see discussion below), nevertheless, the Arbitrator must, according to the Employer, take a more expansive view of the issue and depart from traditional norms. Furthermore, according to the Employer, in order to address this crisis adequately the Arbitrator must require employees to contribute a larger *proportion* of the cost of their coverage, more in line with the percentage of their contribution to premium costs which existed when the existing formula was first negotiated several years ago; this shift in liability is described by the Employer in its Reply Brief as the "gravamen" of its case.

That is the gist of the Employer's arguements. The Arbitrator has serious reservations about these positions, however, beginning with the notion that the Statute is as flexible as the Employer suggests, or that an interest arbitration is an appropriate venue for considering issues of such great social moment that the traditional and statutorily mandated focus must be changed; in particular, that the focus of attention should be shifted to employee obligations, as opposed to employee benefits and compensation. Statutes such as that which governs interest arbitrations in Wisconsin generally incorporate traditional standards for analyzing wage

disputes, such as ability to pay, wages of comparable competitive employees, etc., factors which as much as reasonably possible attempt to mimic market conditions in the context of collective bargaining. The Wisconsin Statute does, in fact, list such conditions, and it further directs the Arbitrator to consider "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*...." Such "traditional" factors historically and universally focus on employee benefits; while there may be co-pays required at the end of the day for uniforms, insurance, etc., the focus is generally on net benefits to the employees and on what is fair to ask of the employers[19].

In other words, collective bargaining is a process by which compensation for services is determined. It is not a forum for people to come together to solve social issues, and interest arbitration is an extension of the bargaining process. The Employer was correct in citing Arbitrator Petrie in *Fox Point* for the proposition that health care coverage is simply another specie of financial compensation.[20] In that respect it is no different than a housing or car allowance, and must be measured based on affordability and other competitive forces. But the Employer is equally reluctant to draw the correct conclusion from that proposition - which is that as a form of financial compensation the focus must be on what is adequate compensation

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[19]Such factors would also include the sort of *quid pro quo* analysis referred to by both parties. That analysis basically refers to the elements which enter into the sort of horse trading that frequently takes in bargaining.

[20]The statutory requirement that the "welfare of the public" be considered must also take into account the need to make certain that public employees, whose jobs are physically demanding and carry great physical risk, and on whom the public relies for its own safety, receive the best possible

for services rendered, compensation structured in part as a benefit rather than as a cash stipend - but compensation nonetheless. The focus must be on what the employees are paid - not on what the employees choose to buy in the way of health coverage from their take home wages. In a capitalist society even public employees are not "stakeholders," they are wage earners.

This is not a 'head in the sand' approach to cost containment; rather, it is a recognition of the proper function of interest arbitration and of what the parties have and realistically can be expected to achieve in the bargaining process. Obviously, employees have an interest in obtaining the most cost effective available health coverage. Since health coverage in this country, for better or worse, is currently funded primarily through group insurance purchased and/or provided at work, it is in their own self-interest to do so. However, as part of bargaining they ultimately cannot demand that the Employer provide such coverage, no matter the cost, nor have they done so in this instance; rather, they ultimately are bargaining for a stipend which is applied as a group toward the purchase of health insurance.

The Employer obviously has a right to propose alternatives which would reduce its costs, and it is legitimate for it to raise such considerations for the Arbitrator to consider along with the concerns and positions raised by the Union, *provided the proposed alternative is based on traditional bargaining criteria* which the Arbitrator is legally entitled required to consider.

However, the Employer has not taken that approach in this arbitration, at least in part; rather, it has suggested that

> By requiring employee payment toward even the least expensive health insurance, the Department hopes to create a sense of immediacy and ownership among the users of the product; in turn,

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medical care.

> this should lead to more effective joint efforts at seeking alternatives and improvements for the system.
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> Emp. Br., p. 6

Despite this "hope", the *Employer has not proposed a cheaper alternative as part of its final offer*, nor has it provided any information or evidence as to what these alternatives or improvements actually might be, nor has it provided any evidence as to how a single union and employer could reasonably be expected to effectuate change in an economic problem which is national in scope, effects everyone in the country, and is intensely political in nature. Even if it were possible, is the Arbitrator's role to promote a dialogue between the parties or to settle contract terms?

Furthermore, the suggestion of the Employer - that discussions regarding insurance alternatives were abandoned by the Union, and that under the current approach it has no motivation to find a cheaper solution to this problem - is entirely without merit. Not only did the evidence indicate that the parties already have based the Employer's contribution on the cheapest available insurance, but the Employer has provided no evidence that cheaper alternatives exist; the only evidence on this point came from the Union President, who testified that the effort was abandoned because all of the alternatives were more expensive.

Several years ago the parties agreed to a formula for the purchase of health insurance which called for an Employer contribution equal to 105% *of the cheapest group insurance available in Wisconsin to public employees.* The State Plan allows for employer contribution as low as 50% of that cost, but the parties negotiated the maximum contribution available under law - 105%.

In short, the Union agreed to a benefit pegged to the cost of the cheapest available group insurance, and it is now acknowledging that a contribution toward the purchase of that insurance benefit is in order because the cost has skyrocketed, but it is not acknowledging that there is some proportionality in regard to sharing the cost of such insurance which needs to be maintained.

When the State Plan was first negotiated, both parties understood that the cost of basic HMO coverage, and the relative costs of other coverages offered under the Plan, would change over time. One of the biggest problems facing parties negotiating for health insurance under the State Plan - or for that matter negotiating any other group insurance - is that most of the time the carriers do not provide complete rate, co–pay or coverage information at the time that negotiations are taking place, as carriers make annual adjustments in these areas, and generally do not commit themselves two or three years down the road. This only increases the gamble taken by the parties when negotiating this particular benefit.

Nevertheless, each party took a calculated gamble - the Employer was certainly attracted by a formula which limited its contribution to the cheapest available insurance, and the fact that it would not have to negotiate more expensive coverage, and the Union was certainly attracted by the fact that it was assured that basic coverage would be paid for by the Employer. The Employer assumed the risk that the cost of coverage would go up, and the Union members assumed the risk of paying for more expensive coverage, outside of the 105% guarantee. The Union also assumed the risk of unknown and unexpected changes in co-pays and coverages. In other words, to some extent both parties were buying a pig in a poke.

What is important to keep in mind is that the Employer did not make its decision as to

what it was prepared to contribute based on what the Union members would be prepared to pay *from their wages* to upgrade their coverage from the basic guaranteed insurance. There is no evidence in the record whatsoever to suggest that such a *quid pro quo* ever took place during negotiations in the late 90s. Rational economic theory would certainly suggest that the Employer's concern would be directed towards *what it would pay*, *not on what the members would spend for more expensive coverage.* Despite this fact, the Employer now is of the opinion that somehow the employees have received a "windfall" as a result of a contraction in the rate structure of the various policy options which occurred in year 2000. If it was a windfall, it was so only in the sense that the employees' risk has paid off, whereas the Employer's has not.

In fact, all that has really happened is that the Employer has had to pay more under the formula because the cheapest carrier dropped out of the bidding. The Employer knew, or certainly should have anticipated, the effect of competitive market forces on the cost of coverage. The Employer could not rely on any particular carrier indefinitely setting the floor for its cost; that risk was inherent in its original decision to agree to a formulaic approach to health insurance - and that continues to be the case under *both* proposals.

Most important, it is not a "windfall" in the sense that the Employer's legal obligation did not change. A "windfall" is defined as an unexpected, unearned or sudden *gain or advantage*." Merriam-Webster Collegiate Dictionary. However, it is also defined simply as "...any unexpected piece of good fortune." Webster's New Twentieth Century Dictionary. If one wishes to characterize what occurred in 2000 as a "windfall," it was only so in the sense that the market for health insurance changed and the employees had "good fortune" as a result.

Furthermore, there is no way of knowing what the cost of more expensive coverages would have been under this highly competitive plan if the low bidder had not withdrawn. Other carriers may have lowered prices anyway in order to continue to attract customers, or the *price of other plans may have gone up beyond the 105% level, in which case the employees may have chosen not to purchase the more expensive insurance, thereby reducing the Employer's cost.* Although the employees ended up paying less and the Employer more, the Employer paid no more than *it had already agreed to pay, which was 105% of basic coverage.* Since the Employer's obligation *could never* rationally rely in the first place on whether the employees would purchase more expensive coverage, it is disingenuous for it to complain that somehow it is unfair that the employees are now paying proportionally less.

Put in the plainest possible English, it is not the Employer's business how the employees spend their wages; it is the Employer's business how much it spends for their services, and comparing what the Employer is required to pay with what the employees spend on a discretionary basis is inapt. Before today, the employees were never required to contribute to *basic coverage,* which was guaranteed by the Employer *without regard to its cost*, so if the Employer has a right to be concerned, which the Arbitrator believes it does, it is because the cost of that basic coverage has gone up dramatically, not because the employees are allegedly getting something for nothing. It is irrational to argue, as the Employer has, that the employees need to pay proportionally more toward the purchase of *basic* health insurance, not necessarily because the cost of basic coverage has gone up, but because the employees are now paying less for upgraded insurance *which they decide voluntarily to purchase.* The Employer agreed to a 105% benefit, not a 100% benefit, and the fact that the extra 5% could go to pay for coverage

upgrades is inherent in the formula.

By participating in the State Plan, the parties no longer negotiate specific coverages. By necessity, the cost to the Employer will vary *annually* based on changes in basic premium charges as well as changes in the residence of the plan participants, marital status and, because it has guaranteed premiums *up to 105*%, the relative cost of other coverages. And the employees' cost will vary *annually* based on co-pays and the relative cost of other coverages. All of these factors will invariably effect disproportionally the amount of money that the parties ultimately pay toward health insurance costs, and it will do so annually. Today the employees may be receiving 105% of basic coverage from the Employer, which allows them to purchase more expensive insurance at less cost to themselves, but tomorrow that coverage may become so expensive that it falls well beyond 105% of the cost of the cheapest available coverage, in which case the Employer either would *save* money if the employees opted for basic coverage, or the employees would have to spend more for the more expensive coverage. No mathematical principal of cost sharing can be deduced from this system, and no arbitrator can or should make a rational judgment based on the vagaries of the marketplace.

The error inherent in the Employer's analysis is only compounded by its comparison of this unit to the *percentage* of employee contributions toward the purchase of health insurance among other employees in the region and, for that matter, even among other comparable units. Health Insurance policies, and their cost, not to mention the benefits which parties negotiate, are almost infinitely variable. If the concept of *sui generis* has any legitimate application in this dispute, it is in discussing or comparing what one employment unit does in this regard to what others do. Comparing one with another is not just a matter of comparing oranges and apples, it

is more like comparing an orange to an entire salad bar. A more rational approach would have been for the Employer to compare the level of its contribution relative to other comparable public employers in Wisconsin *who also participate in the State Plan*, but that analysis was not made. Absent that, health insurance costs must be factored into the total compensation package, which in fact is a consideration mandated by the Statute.

In making its "stakeholder" argument, the Employer has also made the rather ingenious argument that the employee contribution *does* effect what it would ultimately pay for basic coverage because it would have a market effect on the cost of insurance by encouraging the employees to be better consumers of medical services. The Union has pointed out in response that a greater contribution by employees might only encourage them to use more medical services, thereby driving premium costs *up.*

Whatever the merits of the Employer's proposition, it certainly was not proven. There was no evidence, expert or otherwise, submitted at the hearing which would suggest any sort of analogue between employee contributions and the underlying cost of health insurance. And if there were such evidence, it would certainly be in *a macro*economic context; it is highly unlikely that the decisions of any single group could effect market forces of such magnitude.

The second leg of the Employer's argument relates to the alleged seriousness of the problem:

> " In the case at hand, the spiraling costs of providing health care insurance for its current employees is a mutual problem for the Employer and the Association, and the trend has been ongoing, foreseeable, anticipated, and open to bargaining by the parties during their periodic contract renewal negotiations." Arbitrator Petrie in *Fox Point, supra,*

Both parties acknowledge that unless the problem is very serious, neither a *quid pro quo*

adjustment in benefits would be warranted, or, as the Employer has suggested, that an adjustment could be made which varies somewhat from what otherwise might be required.

The Arbitrator does not intend to second guess Arbitrator Petrie, or what the parties to that dispute knew or did not know during the course of their negotiations. There appears, however, to be a tendency in regard to this issue which takes as a given the notion that because health insurance rates have gone up dramatically in the past several years, that they will continue to do so in the future.

The Arbitrator needs to remind the parties that an interest arbitration, regardless of its informality, is an evidentiary hearing, and that no expert evidence on which the Arbitrator could reasonably be expected to rely was submitted which would allow him to take notice of the fact that insurance rates will continue to escalate in year 2004, and beyond, at the same rate as has occurred over the past several years. If the Arbitrator is precluded from taking such notice, then even if he had the statutory authority to do so, it would be imprudent for him to vary from traditional standards in order to address an as yet unproven crisis. Not only are contract years beyond 2003 not at issue in this dispute, but the Arbitrator has no way of predicting how any action he might take in 2003 would effect those coverage years, particularly since the parties' formula for insurance benefits is tied directly to the market, which makes the entire issue even more problematical

The Arbitrator can take notice of the fact that, historically, increases vary from year to year, and periodically plateau. He might also suggest that the rates are already so high that something has to give. Finally, he would question the relationship between the current economic downturn occurring in this country and the continued escalation of health care and

health insurance costs, and whether or not the medical establishment and drug companies can stave off price controls indefinitely. The medical establishment may have what we refer to as an inelastic demand curve, but it would be comforting for a fact finder to have some expert testimony on this issue. Whether or not the anticipated year 2004 rate increase comes about and is affordable should, it seems to the Arbitrator, be an issue for subsequent negotiations and, if necessary, later arbitral resolution.

The issue then becomes one of affordability for the contract years in question, and this is a settled issue: As discussed above, there are adequate funds for either proposal, neither of which would materially change the budget for the current year. To the extent that affordability therefore is an issue, it would be as a factor in determining an appropriate matrix of comparables, and in addressing the contention of the Employer that the NSFD is, because of its legal structure, *sui generis,* without comparison.

The evidence is unrefuted that the three neighboring communities - the three "Ws" - have been used in the past for comparison purposes during negotiations, and that there is a strong predilection among arbitrators not to tamper with such practices in interest disputes. Also, the similarities in force size, afforded services, physical plant, geography, source of manpower, and property tax base, all of which are detailed above, between these communities and the North Shore communities (as an *aggregate),* are both self-evident and overwhelming. The other independent entities noted by the Employer were submitted for comparison purposes primarily for purposes of *distinguishing* other entities from the NSFD, and the "second tier" of comparisons provided by the Union are too dissimilar in the criteria noted above to be useful under the statutory standard, as is also true of comparisons to police departments. Health

insurance is part of a compensation package, and therefore is best compared as part of total compensation with that of other employees performing comparable work, as the Statute describes.

In regard to the contention that the NSFD is *sui generis,* the Union's response in its Reply Brief is as follows:

> The Department next claims that its "governance, financing, and composition" make it irrational to compare its employees' wages, hours and conditions of employment to those of other communities.....The Union doesn't bargain budgets. It bargains wages. The labor market determines the price of a firefighter's wages, not the form of the employer. Local governments come in many different forms: strong mayor, strong counsel, strong executive, fiscally liberal, fiscally conservative, property rich, or property poor, subject to state statutory revenue limits (or not). Like an appraiser assessing the value of real estate, the statute directs us to look to the recent sales of similar property. Neither the appraiser, nor the arbitrator under Sec. 111.77, looks to the form of the buyer.
>
> The Department's governance, finance and composition are political issues. Disputes regarding these issues are appropriately placed before the citizens and not before an arbitrator of a wage and benefit dispute. The citizens of the North Shore, having elected this form of departmental governance, are not entitled to a free ride with regard to their employees' wages. If the cost of wages and benefits, as set by reference to other fire fighters' wages and benefits, are more than the Department's structure can bear, then the citizens must decide what to do. Changing the foundation document is one choice. Returning to separate fire departments is another choice. Contracting for the service with another provider might be another choice. But these are choices for the citizens—not grounds for arbitrators to cut fire fighters' salaries or benefits.
>
> The claim that the Department's governance, financing and composition separate it from the other purchasers of fire fighting services, if accepted by the Arbitrator, would be an exception that

swallows all rules. If these employees' terms and conditions of employment are sundered from other fire fighters' conditions of employment, there will be no objective basis upon which to make a reasoned decision resolving disputes regarding their wages or benefits. The Department explicitly recognizes this flaw in its argument as it writes with regard to the alternative comparables it offered into evidence: "Comparisons to other regional agencies are equally imperfect."[21] If so, just what does the employer expect the law and the arbitrator to turn to as relevant criteria for the determination of the dispute? Of course, it is not so, because none of the "regional agencies" to which the Department points, employs fire fighters.....

Similarly, the record does not support the Department's claim that "every municipal employer to which the Union has sought comparison, whether a fire or police department has more flexibility and resources with which to meet a union bargaining demand."[22] First, no fire or police department has taxing authority. Second, municipal employer budgets are difficult to change, even impossible to change, "after-the-fact." Every municipal government establishes a budget, which may or may not be adequate to cover its employees' union salary and benefit demands. To cover the budget, the local government levies a tax on property. Once adopted, the budget is at least as difficult to change as the Department's. Once the tax is levied, it cannot be changed. Third, the constituent communities can be reasonably compared to other communities' individual common council members. The Department does not present any evidence to support its claim that the City of Wauwatosa's common council members are easier to persuade to finance an increase in the fire department's budget than the constituent members of the North Shore Fire Department. To the contrary, the record is replete with references to the fact that the City of Wauwatosa cut its fire department's budget. Frankly, the fire fighter unions in Wauwatosa, West Allis, and Waukesha would welcome a budget principal that committed those cities' fire department budgets to an annual CPI increase plus 2%.

Un. Reply Br., p. 4-7

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[21] Department Brief, at 15.

This is a particularly cogent and well reasoned argument, which the Arbitrator endorses. While it is true that the pact between these communities does add another layer of administrative complexity to resolving issues, it does not change the ultimate power of these communities to amend their pact, or adjust their conduct in conformance with necessity. This Arbitrator has, on numerous occasion, been treated to testimony by treasurers and comptrollers that levy limits have been maximized, that budgets are crippled by costs of salaries, and in general that the sky is falling. Sometimes these arguments have merit, sometimes they do not, but the fact that they may be made by a city, county, regional authority or some other form of public consortium is not the measure - the measure is the market and the ability to pay. "Ability to pay" not only refers to financial resources, it also refers to the legal power to pay, and the Employer has not made the case that these communities cannot pay his Award, or substantially more.

At the end of the analysis the Arbitrator is left with the fact that the NSFD pays its firefighters less than the those in comparable communities, and significantly less than them in terms of health insurance and benefit packages, despite the fact that it has a tax base approximately *twice as large* as those communities. The wage data have been set out in detail above, as have the *net* insurance benefits paid to the fire fighters in those communities, which far exceed those paid by the NSFD. When compared to the mean of the comparable communities, the NSFD would pay less for wages, total compensation, and benefits and compensation combined, regardless of which proposal the Arbitrator were to select:

> Both offers leave the employees in the unit receiving increases in

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[22] Department Brief, at 14.

> combined wage and health insurance benefits which are below the comparable mean. In 2002 the discrepancy is $4,496.32 (Union Final Offer) and $4,736.32 (Employer Final Offer). In 2003, the discrepancy is $2,807.96 (Union Final Offer) and $3,340.08 (Employer Final Offer). In 2001 the NSFD package was 94.1% of the comparable mean. For 2002 the Union proposal is 93% of the comparable mean and the Employer offer is 92.7% of the mean. For 2003 the Union proposal is 95.8% of the comparable mean and the Employer offer is 94.9% of the mean. Supra.

While the Arbitrator finds promise in the Employer concept of splitting unknown increases in health insurance, with a cap, the concept has no foundational support in the comparable data or when future need and affordability are considered based on the evidence. The Arbitrator refers the parties to the Union's data on the differential cost of the insurance packages among the comparables set out verbatim above, and which the Arbitrator finds to be accurate. The cost of insurance to the Employer is dramatically lower than in the comparable communities, because they negotiate specific coverage, usually indemnity coverage, whereas the Employer's cost is tied to the market. The *quid pro quo*, of course, is that the market can go up.

Finally, the Employer offer fails to provide a satisfactory *quid pro quo.* Not only is the additional half percent wages in 2003 taxable to the employees, as opposed to the health insurance benefit[23] but it does not even raise the total package of benefits to the mean paid by the other communities, nor begin to offset for the minimal health insurance benefits currently being paid.

In conclusion, it is appropriate for the Arbitrator to point out that although he has had

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23 Because of the floors on deductibility of health costs, the tax usefulness of employee contributions to insurance premiums is highly problematical.

the benefit of hindsight in analyzing the facts, his decision would be no different had it been rendered earlier in the contract period. That is because the Arbitrator still would have been required to consider the possibility that the cap of $75.00 per month in 2003 would have been reached. Furthermore, the arguments raised by the Employer are based in great measure on what has taken place in insurance rates over the past several years, and on past contracts, and are not significantly effected by the fact that this Award is being made in the middle of 2003.

DECISION AND AWARD

For the above stated reasons the Final Proposal of the Union is Awarded, and the parties are ordered to incorporate the Union Proposal into their Agreement.

Respectfully Submitted

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Stephen A. Bard, Arbitrator

Dated: July 10, 2003