

of Fact, Conclusions of Law, Certification of Results of Investigation, and Order Requiring Arbitration. The parties were ordered to select an arbitrator from a panel of arbitrators submitted to them, and they selected the undersigned neutral arbitrator to hear their dispute. Pursuant to the parties' selection, the Commission issued an order on August 9, 2004, appointing the undersigned "as the impartial arbitrator to issue a final and binding award in the matter pursuant to Sec. 11.77(4)(b) of the Municipal Employment Relations Act."

A hearing was held in the Monona City Hall, on September 20, 2004, where each party presented evidence in support of its final offer. Briefs were filed on October 26, 2004.

Statutory Criteria

Sec. 111.77(4)(b) of the MERA states, ". . . The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification." Sec. 111.77(6) of the Act sets forth the criteria the arbitrator shall apply in selecting between the final offers:

111.77 Settlement of disputes in collective bargaining units composed of law enforcement personnel and fire fighters.

* * *

(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.

The Final Offers

City Final Offer

Both sides propose a two year agreement. The City proposes (1) across the board wage increases of 3.5% each on January 1, 2004, and January 1, 2005; (2) a 10% employee contribution to health insurance premiums beginning in 2005 to be paid with pre-tax dollars; (3) a one-time payment of \$647.73 to each unit employee who takes health insurance, that amount being the employee's pro-rata share of the savings from switching to the WPS insurance plan; (4) a tax-qualified Sick Leave Conversion Plan that allows employees to receive the value of unused sick days as payment toward retiree health insurance, with the option given to the Union to refuse this benefit; (5) modification of the provision requiring 12 hours between shifts to permit scheduling of inservice or specialized training eight hours following the preceding shift without incurring overtime payment. The City also states in its final offer that it is giving notice that it is terminating certain past practices but making no proposal in connection therewith for any change in contract language.

Union Final Offer

The Union final offer states as follows:

1. Wages

1/01/04
3%

1/01/05
3%

2. All current insurance coverages maintained at current levels (12/31/03) and continued at 100% cost to the City.

Currently the City pays up to 105% of the lowest health care premium.

The City's Position on Health Insurance

The parties are in agreement that the principal issue in this case is whether the City's proposal to require bargaining unit employees to contribute 10% of the cost of the health insurance premium should be awarded. The City contends that various of the statutory criteria favor its position in this case and require an award adopting the City's final offer. Its arguments as to each of the criteria relied on will here be summarized.

Interests and Welfare of the Public and Financial Ability

The City argues that its economic situation is important. The fact that it is a landlocked community that is not growing, it asserts, is critical because "its limited growth potential limits its ability to fund future increases in health insurance rates." It asserts that between 1999 and 2004 the lowest premium for single coverage rose by 85% and for family coverage by 80%. Citing a consulting firm's report, the City states that the trend of upward spiraling costs is expected to continue through 2008. Such past and future increases, the City argues, strain municipal budgets.

The City points to the Towers Perrin consulting firm's survey of 311 firms that found that in 2004 the average employee contribution toward the total cost for single coverage was 19% and for family coverage, 22%. It asserts that the solutions recommended by Towers, which include careful vendor selection and employee cost sharing, are particularly appropriate for the City of Monona because of its limited ability to absorb future insurance cost increases given that it is a landlocked community with little room to expand its existing tax base.

In support of its argument that its ability to meet spiraling cost increases is limited, the City points to its Exhibit 2, which shows that in the 10 years from 1992 to 2002 its equalized value grew by 80.3% as compared with much higher growth for municipalities such as Edgerton, Middleton, Stoughton, Fitchburg, Sun Prairie, and Verona. The last two communities,

the City notes, grew respectively in equalized value during the same period by 178.9% and 219.9%. It is unrealistic, the City argues, to expect Monona to continue to endure double-digit increases in health insurance costs without attempting to contain those costs. An important aspect of health care cost containment, the City contends, is employee participation, and employees should pay a reasonable portion of the health insurance benefit.

External Comparisons

The most comparable communities to Monona, the City contends, are Town of Madison, Village of Maple Bluff, and Village of Shorewood Hills. All three communities, the City asserts, are landlocked by the City of Madison and are not growing or are losing population. In all three municipalities, according to the City, employees, including the police, "share the cost of their health insurance by paying a 10% share of their premiums." Because premium sharing exists in local landlocked communities comparable to Monona and because Monona's proposed wage increase is greater than either Shorewood Hills's or Town of Madison's, the City contends that the external comparison factor supports its final offer on health insurance.

The City further argues that premium sharing for municipal employees is becoming the norm. It asserts that the following communities in southern Wisconsin have premium sharing for their employees, in the amount indicated, for their police:

Municipality	Employee Health %
Watertown	10%
Beaver Dam	7.5% - Current. Increased gradually from 5% in 2000
Brown Deer	7.5%, except 5% for police employees hired before 1/1/02, and public works employees hired before 1/1/03
Platteville	7%
Lake Mills	5% - Cap of \$5/Mo for single coverage, and \$10/Mo for family coverage in 2004
Lancaster	5%
Marshall	10%
Lake Delton	10%

According to the City, even the city of Madison has negotiated premium contribution in the 2004-2007 bus drivers contract, which provides that pay rate increases shall be reduced by .1% for every 1% increase in health insurance premiums beyond a 4% increase.

The City contends that the comparables advanced by the Union are not appropriate because the principal criterion used by the Union in its selection was that the jurisdiction have a contract with Teamsters Local 695. In addition, the City argues, the Union's proposed comparable jurisdictions are inappropriate because, unlike Monona, they have significant growth rates and the potential for significant future expansion. This growth, the City asserts, creates additional tax revenue that is not available to Monona.

Even if the arbitrator were to consider the communities advanced by the Union to be comparable, the City contends, Monona's proposed 3.5% increase exceeds the percentage increases granted to police officers in the other communities. For example, the City asserts, Baraboo's police agreement provides a 3% increase for 2004; Oregon's, 3% in 2004 and a wage freeze in 2005; Middleton's, 3% in 2005; Dodgeville, 3.2% in 2004-2005; and Verona's, 3% in 2004. Monona's higher wage proposal, the City contends, is an above-market increase and supports its health insurance cost sharing proposal.

Internal Comparisons

The City contends that its proposal is supported by the fact that all of its unrepresented employees now pay a 10% share of their health premiums. Two of the other bargaining units, according to the City, fire and public works, are currently in arbitration over the health care issue; and negotiations with the library and dispatch units are only beginning.

Comparisons with Private Sector

The City contends that the Towers Perrin 2004 Health Care Cost Survey of private employers shows that employee premium sharing is the norm in the private sector. Monona's proposal of a 10% premium share, the City argues, is well below the national average of a 19% employee share for single coverage and a 22% share for family coverage.

Cost of Living

The City asserts that between 2002 and 2003 the Not Seasonally Adjusted Consumer Price Index - All Urban Consumers for the Milwaukee area increased by 2.1%; and in the first half

of 2004, by 1.2%, or at an annualized rate of 2.4%. This, the City notes, is less than the 3.5% wage increase it has offered. The City argues that the cost of medical insurance to the City has been rising faster than the general cost of living and that it is not reasonable for the City to continue to absorb these costs while still granting a wage increase that exceeds the cost of living.

Overall Compensation

The City notes that between 1998 and 2004 the premium cost of family coverage for the Dean Health Plan, the most commonly used plan among the unit employees, went up from \$428.86 per month to \$854.80 per month, a 99% increase in six years. The City views this as a very serious problem that must be addressed.

It has done a number of things, the City asserts, to attempt to deal with the problem. It went on the market to get a better price for equivalent benefits and was able to get a quote from WPS of \$827.93 for the year 2004, a savings of about \$27 a month compared with the Dean Health Plan monthly premium of \$854.80 under the state plan. The City notes, however, that since contractually it would still be obligated for 2004 to pay 105% of the lowest premium, it would have to pay as much as \$869.32 for employees who elected a higher priced family plan. In fact, as City Exhibit 11 shows, the City asserts, three police officers chose a higher priced plan costing \$873.71 per month in 2004, with the result that the City is paying a monthly premium of \$869.32 for those officers, whose own share is only \$4.38 per month.

The City asserts that "[a] promise to pay 105% of the lowest bidder encourages all bidders to be within five percent above one another, and at the same time encourages the users of the benefit not to take the lowest cost provider, but to take higher cost providers, because they may do so at no cost, or in the case of these unit employees at Monona, at a cost of only \$4.38 per month." This is one of the reasons, according to the City, that obtaining a lower premium quote did not solve the problem of meeting spiraling health insurance costs.

Second, the City argues, no plan design change or other change is going to suddenly or gradually, or ever, halt the cost of health benefit increases. For the City to reduce escalating health benefit costs, the City asserts, every individual consumer must pay a reasonable proportion of the cost of the health insurance product he or she chooses. To help employees share in the cost of the health insurance plan they select, the City notes, it is offering to give each employee a one-time payment of \$647.73 representing each employee's share of the money the City "saved" by switching to WPS.

It places the word "saved" in quotation marks, the City explains, because what it has achieved by switching to WPS from the state plan is a smaller increase from the previous year (2003) rather than an actual saving. Thus the lowest WPS family rate of \$827.93, the City points out, still represents an increase of 16.4% over the 2003 state plan lowest rate of \$710.70. What it seeks by employee contribution to payment of the premium, the City asserts, is "to establish a balance that has the potential to be stable, by establishing a fair percentage sharing of health costs." The City urges that "[h]ealth insurance is an economic benefit, and its cost is a part of the total economic package that employees receive."

The City attaches a group of spread sheets to its brief for the purpose of showing that when overall compensation is taken into account, police officers will receive a substantial increase in economic benefits under its final offer even with a 10% employee contribution to health insurance premiums. Using a patrol officer at the top rate and a detective at top rate as examples, the City shows that under its offer a patrol officer at top wage rate will receive an increase in the amount of 5.55% in 2004 over 2003 when the employee's annual wage, the City's health care contribution, and its payment in behalf of the employee to the retirement fund are taken into consideration.

This, according to the City's figures, represents an increase for the patrol officer from \$59,905.80 in 2003 to \$63,230.12 in 2004. Without retirement, according to the City's calculation, the increase was 5.63% (from \$53,204.40 to \$56,201.69). For a detective at the top of the wage scale, the City calculates, the increase in overall compensation from 2003 to 2004 was 6.12% with retirement contribution (from (\$62,583.00 to \$66,413.02) and 6.28% without retirement contribution (\$55,532.40 to \$59,018.35).

According to the City calculation, for 2005, when, under its offer the employee contribution to health insurance premium would kick in, and assuming health insurance premiums go up 10%, the increase for a top rated patrol officer, including the \$647.73 lump sum payment, would be 2.80% (\$63,230.12 to \$64,999.49) and for a top rated detective, 2.97% (\$66,413.02 to \$68,388.43). Not including retirement the increase would be 2.03% for a top rated patrol officer (\$56,201.69 to \$57,342.20) and 2.23% for a top rated detective (59,018.35 to \$60,332.14). The City's calculations for 2005 also take into account the savings in income taxes to employees in having their health insurance premium payments made in pretax dollars. According to the City the annual tax savings would be \$93.48 for a patrol officer and \$106.17 for a detective, assuming a 10% increase in insurance premium in 2005.

If there were to be no increase in the health insurance premium for 2005, the increase in overall compensation for top rated patrol officers, including the \$647.73 health care credit, would be 1.51% including the retirement contribution by the City (\$63,230.12 to \$64,183.81), according to the City calculation, and .58% not including the retirement contribution (\$56,201.69 to \$56,526.52). For detectives at the top of the scale the increase would be 1.68% (from \$66,413.02 to 67,527.66) including the City contribution to the employee's retirement account, and .77% excluding the retirement contribution (59,018.35 to \$59,471.36). The figures assume a \$72.62 tax savings for the top rated patrol officer and \$84.15, for the top scale detective. The tax calculation represents 21% (15% for income tax and 6% for FICA) of the actual annual cash outlay by the employee for health insurance after deducting the Company's one-time payment to the employee of \$647.73.

According to the City's calculation, the Union final offer would result in a 5.12% overall increase for top rated patrol officers in 2004, if retirement contribution is included in the computation, and 5.21%, excluding retirement contribution. For detectives at the top of the scale, the City figures the overall increase in 2004 as 5.69% with retirement contribution, and 5.85% without it. For 2005, assuming a 10% increase in health insurance premium cost, the City calculates the top rated patrol officers' overall increase under the Union proposal as 7.44% with retirement, and 4.19% without retirement contribution. For the highest paid detectives the parallel figures, in the City's calculation, are 7.49% and 4.26%. If there were to be no increase in health insurance premiums in 2005, top paid patrol officers, the City calculates, would receive, under the Union's final offer, a 5.61% overall increase including retirement contribution and a 2.42% increase excluding retirement. Top rated detectives, according to the City's calculation, would receive an overall increase of 5.66% with retirement contribution and 2.49% without retirement contribution.

The City argues that, assuming a 10% increase in health care costs for 2005, the two year percentage overall increases under the City's offer, including retirement contribution, would be 8.5 % for a patrol officer at the top wage rate and 9.28% for a detective at the top of the scale. These are very generous two year increases, the City contends, given that the inflation rate has been in the 2% range the past three years. Under the Union offer, the City asserts, top rated patrol officers and detectives would receive increases totaling more than 12% over two years, an amount the City considers out of line given the low rate of inflation in recent years.

Other Factors Normally Considered

Its proposal, the City argues, does not really amount to a request to change the status quo because payment of health benefits is part of the economic package. Therefore, in the City's view, limiting the City's health insurance contribution is the equivalent of proposing a smaller wage increase. It quotes from a 1993 Wisconsin interest arbitration decision finding that an employer's proposal to require employee contribution to health insurance premiums for the first time did not amount to a change in the status quo because with premium cost increases the employer would still be paying more than it did under the expiring contract. Here too, the City argues, with its lump sum payment the City would be paying as much for health benefits as it did in 2004. Consequently, the City contends, there has been no change in the status quo and the three-prong analysis commonly applied when a party seeks to change the status quo does not apply.

Even, however, if a change in the status quo analysis is used, the City argues, Monona has satisfied all three parts. The City has demonstrated that there is a problem in terms of escalating medical insurance costs far in excess of the rate of inflation, it contends, and its proposed solution of cost sharing addresses the problem. It has also offered an adequate quid pro quo, the City asserts, in that its proposed 3.5% wage increase exceeds the cost of living increase and exceeds the percentage increases other communities are offering. In addition, according to the City, the quid pro quo includes the cash payments representing savings to the City from switching to the WPS health plan, a sick leave conversion plan, and a tax-qualified premium payment plan. The City requests that its final offer be selected.

The Union's Position on Health Insurance

External Comparisons

The Union contends that comparable communities in the metropolitan Madison area do not require employee contribution to the premium payment. The most comparable community with Monona, according to the Union, is the city of Middleton in that both jurisdictions are suburbs of Madison, have a similar number of patrol officers and detectives on their forces, and pay them close to the same amount of wages. Police officers in Middleton, the Union asserts, pay no portion of their insurance premiums.

Another comparable jurisdiction to Monona, the Union contends, is Fitchburg. It is a suburb of Madison and has 22 patrol officers and 2 detectives on its police force, the Union states, as compared with 11 patrol officers and 4 detectives on Monona's force. Senior patrol officers in Fitchburg earn \$23.78

per hour, according to the Union, as compared with approximately \$22.91 per hour for senior Monona patrol officers. Like Monona, the Union asserts, Fitchburg pays 105% of the lowest premium for its police employees.

Other comparable communities where police employees are not required to contribute to the premium cost, the Union asserts, are Cottage Grove, Fort Atkinson, McFarland, Oregon, Sun Prairie, Verona, and Waunakee. The Union contends that, as exemplified by the collective bargaining agreements in the jurisdictions it proposes as comparable, there is an overwhelming trend that employees are not required to share health insurance premium costs.

The Union objects that many of the collective bargaining agreements introduced into evidence by the City are irrelevant because they do not involve police employees. In the Union's view, the arbitrator should not consider contracts involving public works bargaining units, water treatment employees, bus drivers, or any other employees who are not police officers. There is no basis, the Union asserts, for comparing police officers with other kinds of employees of other municipalities.

The Union also contends that many of the jurisdictions proposed by the City as comparable are not, in fact, comparable. Only those cities that are in geographic proximity to Madison and of the same size, the Union asserts, are relevant for comparison in this case. Lancaster and Brown Deer, the Union argues, should be rejected as comparable because they are outside the Madison metropolitan area and beyond a 40 mile radius from Madison. According to the Union, "The size of the Madison metropolitan area, and the availability of comparable communities in that area obviates the need to look to suburbs of Milwaukee or to rural areas for comparable communities."

The Union asserts that it "would limit an analysis of the relevant comparable communities to those cities which are a similar size as Monona, and which are in close proximity to Madison." The Union, in addition to the communities named above, would include Baraboo and Dodgeville but would exclude the City's proposed jurisdictions of Lancaster, Platteville, Lake Mills, Watertown, Beaver Dam, and Lake Delton "as being outside the metro-Madison area and not comparable to Monona." Maple Bluff should be excluded, the Union argues, because "the City failed to include any information on either the size of the city or the size of the bargaining unit." The city of Madison should be excluded, the Union contends, because of the relative size of Madison to Monona.

The Union argues that few of the cities outside the

metro-Madison area require a 10% employee contribution to insurance premiums. Beaver Dam, Lancaster, Lake Mills, and Lake Delton, the Union asserts, all pay a lesser percentage of the premium than the City has proposed in this case. According to the Union they require only a 5% contribution. The Union contends that the contracts in many of the jurisdictions named by the City exemplify that a 10% employee contribution for premiums is out of the norm.

Internal Comparisons

The Union asserts that there are six collective bargaining agreements with the city of Monona, two of which cover the years 2004 or later. The remaining four contracts, according to the Union, are in interest arbitration. Despite the lack of resolution in the other units, the Union states, it is noteworthy that none of the City's contracts require employees to contribute to insurance premiums. The Union argues that "[t]he bargaining history of the City contracts . . . reflects a solid trend that employees should not be forced to pay any portion of insurance premiums."

Overall Compensation

The Union notes that the statute requires that overall compensation of the bargaining unit be considered. The City's proposal, the Union argues, would result in less than a one percent net wage increase for members of the bargaining unit. Passing on 10 percent of the insurance premium to employees, the Union asserts, would mostly eliminate any raise in 2005.

Using City Exhibit 11 as a source and assuming a 10% increase in the health insurance premium for 2005, the Union figures the monthly premium for family coverage, including dental insurance, would be approximately \$972.40.¹ Under the City's proposal, the Union argues, "the net wages for each employee in 2005 would effectively be reduced by \$97.24 due to the cost of the 10% of insurance that the employee would need to pay."

A ten percent contribution to premium cost, the Union asserts, would eliminate most of the raise that bargaining unit employees would receive. For example, according to the Union, for a patrol officer at the top of the wage scale an increase of wages of 3.5% would equal approximately \$135 per month in 2005.

¹City Exhibit 11 shows that for most bargaining unit members with family coverage the City paid a total monthly premium of \$884.07 for health and dental insurance coverage. If premiums increased by 10% in 2005, the total monthly premium would be \$972.47.

Subtracting \$97 a month for the employee's share of the insurance premium, the Union states, would reduce the increase to \$38 per month, amounting to an increase in net wages of only .97% for the year 2005. For the entire bargaining unit, the Union calculates the net wage increase as ranging between .58% and 1.1% each, depending on whether the employee was a patrol officer or a detective and where the employee fell on the wage scale.

The Union argues that the one-half percent additional annual wage increase in the City's offer does not make up for the monies the employees would have to pay out for premium payments. Nor, the Union emphasizes, does the City point out the long-term cost to employees of its proposal. Once the employees begin paying a portion of the insurance premium it is unlikely, the Union asserts, that the City will ever go back to paying the entire premium. The Union fears that if double digit raises in insurance premiums continue, in only a few years employees can expect negative salary growth as a result of the 10 percent premium contribution.

"The City's proposal for a net wage increase of only 1% is far below both the 2004 cost of inflation (2.3%)," the Union argues, "and the 2004 average increase in wages (2.2%)." No rationale is offered by the City, the Union asserts, for limiting Monona police officers' wage increase to less than one percent in 2005. The Union stresses that without raising an issue about economic necessity or inability to afford wage increases, the City is asking police officers to accept only a negligible raise, "offering nothing in return except for the expectation of less wages and higher insurance premiums in the future." The Union contends that its offer is more reasonable under the statutory criteria and should be selected.

City Position on Shift Scheduling

The City seeks an additional exception to the existing requirement that the City pay overtime to officers if they are scheduled to work less than 12 hours after the prior shift. It proposes to permit a break of 8 hours between shifts when the next shift is an inservice or specialized training shift. Such training, the City argues, is sometimes something that the officer himself wants to take. Its proposal, the City argues, eliminates a disincentive for providing training, and it is in the public's interest to remove such a disincentive.

Union Position on Shift Scheduling

The Union opposes the City's effort to amend Article 18 to include inservice and specialized training as additional

reasons for permitting less than 12 hours between shifts without requiring overtime payment. Such training "is mandated by the state," the Union argues, "and is not for the self enrichment of employees." The proposed change in language, the Union argues, would penalize employees who are working for the City's benefit.

Analysis, Findings, and Conclusions

Findings as to Comparable Jurisdictions

Bargaining history is very important in establishing comparable jurisdictions for a community. In a prior award involving these same two parties and the police unit, Arbitrator Edward B. Krinsky noted that "[t]he City agrees that the communities cited [by the Union as comparable communities] are the ones generally used by the parties in negotiations for purposes of comparison." Decision No. 15093-A dated April 27, 1977.² The agreed upon comparable communities in 1977 were the following:

- Madison (City)
- Madison (Town)
- Middleton
- Stoughton
- Sun Prairie

Although the decision was rendered in 1977, three of the five communities (Middleton, Stoughton, and Sun Prairie) are on the Union's current list of comparables, and the fourth (Town of Madison), on the City's list.³ The 1977 decision does not give any population figures for these communities. However, City

²At the arbitration hearing the arbitrator inquired of the parties if they had any historical experience or practice as to what they consider comparable communities. Union counsel stated that there was a 1977 decision involving the police department unit. He offered to show a copy of it to the arbitrator. The arbitrator stated that he would leave it to the parties whether to enter the decision into evidence. Neither party offered it. Nevertheless the arbitrator came across the decision in researching prior interest arbitration decisions on the WERC web site and believes that the decision is relevant on the issue of comparable communities.

³Neither party seeks to have City of Madison included as a comparable jurisdiction in this proceeding.

Exhibit 3 at A-17, 18, gives the following population statistics for Monona and each of these four jurisdictions as of 1980:

Monona	8,809
Madison (Town)	6,162
Middleton	11,779
Stoughton	7,589
Sun Prairie	12,931

In 1980 (and presumably also in 1977) Middleton and Sun Prairie were well within + or - 50% of Monona's population, and Stoughton and the Town of Madison even closer.⁴ By 2003, however, Sun Prairie's population had increased more than 74 percent to 22,585, while Monona's had decreased over 9 percent to 7,981. Sun Prairie can therefore fairly be characterized as a fast-growing community while Monona is losing population.⁵

Sun Prairie's population is now 2.83 times the size of Monona's. As noted, its population is increasing while Monona's is falling. Sun Prairie's 2004 municipal equalized value of \$1,915,760,000 is 2.2 times Monona's 2004 municipal equalized value of \$868,648,500.⁶ Moreover, Sun Prairie's equalized value

⁴The arbitrator believes that jurisdictions with demographics within + or - 50% of each other are presumptively comparable with respect to those demographics. That is not to say, however, that jurisdictions whose demographics differ by a greater percentage may not also be comparable.

⁵Between 2000 and 2003 Sun Prairie grew by 10.88% while Monona's population decreased by approximately one-half percent.

⁶The 2004 equalized value figures for Monona and Sun Prairie are taken from the Wisconsin Department of Revenue web site on the Internet.

is increasing at a faster rate than Monona's. This is evident from the fact that in 2002 Sun Prairie's municipal equalized value was only 1.9 times that of Monona's (\$1,390,448,400 vs. \$728,998,100).⁷ The reverse population trends (increasing in Sun Prairie and decreasing in Monona) and large differences in the populations, growth rates, and the municipal equalized values of the two communities make it unreasonable to conclude that Monona and Sun Prairie are comparable cities. The record indicates that Sun Prairie is probably in a better position to absorb significant cost increases than is Monona.

⁷The 2002 municipal equalized value figures for Monona and Sun Prairie are taken from City Exhibit 2.

Middleton's population has increased approximately 39 percent from 11,779 in 1980 to 16,363 in 2003. It is now 2.05 times the size of Monona. However, its growth rate is not as fast as Sun Prairie's, which, as noted, increased in population by more than 74 percent in the same period. According to City Exhibit 2, its population increased by 13.6% between 1992 and 2002 as compared with 35.3% for Sun Prairie in the same period of time. Monona's decreased by 6.8% during this same period. Middleton's per capita equalized value at \$102,130 is close to Monona's at \$91,159.⁸ With 30 sworn law enforcement officers, the size of Middleton's force is reasonably similar to the size of Monona's force, which has 18 sworn officers.⁹ Sun Prairie's force is significantly larger.¹⁰ Middleton is less than 15 miles from Monona.¹¹ Based on all of the foregoing considerations the arbitrator has determined that Middleton still retains sufficient

⁸The 2002 figures in City Exhibit 2 were used for this calculation.

⁹The figures for the number of sworn law enforcement officers on the Monona and Middleton forces are taken from the Union exhibit (unnumbered) showing the staffing levels of Monona and proposed comparable jurisdictions. In order to arrive at the total number of sworn officers the arbitrator has added 1 to the numbers shown on the Union exhibit to take into account the police chief, who is also a sworn officer and is not included on the exhibit.

¹⁰According to the Union exhibit on comparable jurisdictions, there are currently 36 sworn officers on the Sun Prairie police force.

¹¹All mileage figures between cities used in this opinion are taken from Map Quest on the Internet.

similarities to Monona to remain a comparable jurisdiction in accordance with the earlier practice of the parties.

Stoughton and Town of Madison are also properly considered comparable to Monona. At 12,629, Stoughton's population is 58% above Monona's. Its per capita equalized value of \$52,808 is well within 50% of Monona's \$91,159. Similarly Stoughton's gross municipal equalized value of \$661,369,300 is close to Monona's gross municipal equalized value of \$728,998,100.¹² Stoughton is less than 16 miles from Monona and its police force is of similar size.¹³ There are sufficient similarities between the two cities to consider Stoughton as comparable to Monona.

Fitchburg's situation vis-a-vis Monona is similar to that of Sun Prairie's. Its population increased by more than 80 percent between 1980 and 2003 compared with a 9 percent reduction in Monona's population during the same period.¹⁴ Fitchburg's 2003 population of 21,595 is 2.7 times larger than Monona's. Its 2004 municipal equalized value of \$1,892,988,500 is 2.18 times Monona's 2004 municipal equalized value of \$868,648,500. Between 1996 and 2003 Fitchburg created 688 new land parcels as compared with only 20 in Monona. As with Sun Prairie, the reverse population trends (increasing in Fitchburg and decreasing in Monona) and significant differences in the populations, growth

¹²The municipal equalized value comparisons for Monona with Stoughton are based on the figures for 2002 found in City Exhibit 2. Those figures are not contested by the Union.

¹³According to the Union exhibit covering size of police force for Monona and proposed comparable jurisdictions, there are 17 sworn officers below the rank of chief on the Monona force and 20, on the Stoughton police force.

¹⁴Between 2000 and 2003 its population grew by 5.34% as compared with a decrease of approximately one-half percent in Monona's population.

rates, and the municipal equalized values of the two communities make it unreasonable to conclude that Monona and Fitchburg are comparable cities. The record indicates that Fitchburg is probably in a better position to absorb escalating costs than is Monona.

Watertown, put forward by the City as a comparable community, is the only other municipality on either party's list of proposed comparables with a population more than 22 times that of Monona's. At 22,585, its population is 2.8 times that of Monona and the same size as Sun Prairie's. Its force of 38 sworn officers is twice the size of Monona's.¹⁵ Like Sun Prairie and Fitchburg it is a growing community. Unlike Middleton, there is no evidence that the parties have ever used Watertown as a comparable community. It is more than three times the distance of either Sun Prairie or Fitchburg from Monona. There is no rational basis by which the arbitrator could exclude Sun Prairie and Fitchburg as comparable communities and include Watertown. Watertown will not be considered a comparable community with Monona for purposes of this proceeding.

Maple Bluff, proposed by the City, has a population of 1351. Monona's population of 7981 is more than five times that of Maple Bluff's. City Exhibit 13 shows five sworn officers employed in the police department of Maple Bluff, including the police chief. This compares with 18 sworn officers on the Monona force, including the police chief, according to the Union's evidence.¹⁶

In City of Antigo, Decision No. 29425-A (1999), Arbitrator Richard U. Miller rejected the municipality of Crandon, population 2,061, as a comparable jurisdiction to Antigo, population 8591, because Crandon was "too small." Antigo had approximately four times the population of Crandon as compared with Monona, which has almost six times the population of Maple Bluff.

¹⁵The City did not provide information regarding the size of the police force for most of its proposed comparable jurisdictions. For these jurisdictions the arbitrator has used the October, 2004, publication of the State of Wisconsin Office of Justice Assistance (hereinafter "OJA") entitled Crime and Arrests in Wisconsin - 2003 as his source for the number of sworn officers on their police forces. According to the OJA publication, Table 9, p. 239, there were 38 sworn officers on the Watertown force in 2003 as compared with 19 on the Monona force (Table 9 p. 237). The OJA publication is available on the Internet on the OJA web site.

¹⁶According to the OJA publication, the comparative figures for Maple Bluff and Monona are respectively 5 and 19.

Arbitrator John C. Oestreicher, in City of Delafield, Decision No. 29386-A (1998), rejected Dousman, population 1508, and three other communities with even fewer residents as comparable jurisdictions to the city of Delafield, population around 6300, because, he stated, ". . . Section 111.77 does not apply to members of a police department employed by a municipality having a population of less than 2,500"

Although, like Monona, Maple Bluff is a suburb of Madison that is landlocked and is not growing in population, there are great disparities in their populations and in the sizes of their police forces. In addition, Monona's 2004 municipal equalized value of \$868,648,500 is 2.8 times that of Maple Bluff's equalized value of \$309,975,500. On the other hand, the per capita equalized value of Maple Bluff's property at \$229,441.52 is 2.1 times that of Monona's at \$108,839.56. The population, force-size, and equalized value statistics show that the two communities are not economically comparable for collective bargaining purposes.¹⁷ The arbitrator so finds.

¹⁷In so concluding the arbitrator has not relied on the index crime figures for the two communities since neither party raised them at the hearing or in its brief. However, they are a matter of public record and are listed in Table 1, p. 110 of the OJA publication Crime and Arrests in Wisconsin - 2003. The number of index crime offenses in Monona in 2003 was 422 as compared with 9 for Maple Bluff.

Nor is Shorewood Hills, with a population of 1721 and a police force of five sworn officers, comparable for collective bargaining purposes with Monona.¹⁸ In addition to the widely disparate population and police department sizes of the two communities, Monona's 2004 municipal equalized property value is more than twice that of Shorewood Hills, while Shorewood Hills's per capita equalized value is more than twice Monona's. The police officers of Shorewood Hills apparently are not organized since the City did not introduce a collective bargaining agreement for those employees. This fact in itself does not rule out Shorewood Hills as a comparative community,¹⁹ but it would be a factor tending toward differentiation. The wage structure and wage scale for Shorewood Hills, as shown in City Exhibit 32, are substantially inferior to Monona's, although both communities are suburbs of Madison and located less than 9 miles apart. The arbitrator concludes that Shorewood Hills is not a comparable community with Monona for purposes of collective bargaining.²⁰

Because Monona is a suburb of the city of Madison, and there are many jurisdictions within approximately 50 miles of Madison, the arbitrator would limit the list of comparable

¹⁸ The population and number of sworn officers statistics for Shorewood Hills are found in Table 9 of the OJA publication Crime and Arrests in Wisconsin - 2003 at p. 237.

¹⁹ See City of Delafield, Decision No. 29386-A (John C. Oestreicher, 1998) p. 14, where the arbitrator stated, ". . . The fact that Pewaukee's officers are not represented is not, by itself, sufficient reason to exclude this unit from the list [of comparable communities]."

²⁰ Although not relied on by the arbitrator because it was not mentioned by either party, Table 1, p.110 of the OJA publication Crime and Arrests in Wisconsin - 2003 shows that Shorewood Hills had 15 index crimes in 2003 as compared with 422 in Monona.

communities to a 50 mile radius of Monona. Communities much beyond 50 miles from Monona are probably not in the same labor market. For that reason the arbitrator would exclude Platteville at approximately 75 miles, and Brown Deer, 85 miles distant from Monona. Brown Deer is only about 12 miles from Milwaukee, and is part of that labor market. Platteville is two counties away from Monona in Grant County, and less than 23 miles from Dubuque, Iowa. In addition to Brown Deer and Platteville, the arbitrator would exclude Lancaster located approximately 85 miles from Monona in Grant County as too distant.

The remaining proposed comparables of the City not yet discussed are Beaver Dam, Lake Mills, Marshall, and Lake Delton. Marshall is in Dane County, approximately 19 miles from Monona. It has a population of 3,537 and a police force with seven sworn officers, who are represented by a union.²¹ The arbitrator believes that based on geographic proximity and population Marshall should be considered a comparable jurisdiction to Monona even though its police force is significantly smaller. Marshall can fairly be viewed as balancing the inclusion of Middleton, with its significantly larger population than Monona's.

The arbitrator would also include Beaver Dam with a population (15,304) and number of sworn police officers (30) similar to Middleton's.²² Beaver Dam is approximately 41 miles from Monona. Its total equalized value of property at \$733,834,900 is close to Monona's \$728,998,100; and its per capita equalized property value of \$48,117 is within 50 percent of Monona's \$91,159 per capita property value.²³ These statistics qualify Beaver Dam for inclusion as a comparable jurisdiction.

²¹The population and police force numbers for Marshall are taken from Table 9 of the OJA publication Crime and Arrests in Wisconsin - 2003, p. 237.

²²The population and number of sworn officers figures for Beaver Dam are taken from the OJA publication Crime and Arrests in Wisconsin - 2003, Table 9, p. 237.

²³City Exhibit 2.

Lake Mills is also a comparable jurisdiction to Monona. Its population (4,918), size of police force (11), and per capita equalized value of property are all within 50 percent of Monona's for these categories.²⁴ It is located approximately 26 miles from Monona. The arbitrator will include Lake Mills as a comparable community with Monona.

²⁴City Exhibit 2 and OJA publication, Table 9, p. 239.

Lake Delton, with 2495 residents in 2003, has a population less than one-third the size of Monona. However, its police force of 14 sworn officers is close to the number of sworn officers on the Monona force.²⁵ Its police officers are covered by a collective bargaining agreement with a wage structure and hourly wage very competitive with the wage provisions in the labor contract for Monona police officers.²⁶ Lake Delton's municipal equalized value of \$622,173,600 is close to Monona's equalized value of \$728,998,100.²⁷ The two jurisdictions are 54.19 miles apart, within the geographic radius of approximately 50 miles selected by the arbitrator as the cut-off point for comparability.²⁸ The arbitrator concludes that Lake Delton is a comparable jurisdiction to Monona for collective bargaining purposes.²⁹

²⁵The number of sworn officers for the Lake Delton force (14) is taken from the OJA publication Crime and Arrests in Wisconsin - 2003, Table 9 at p. 242.

²⁶City Exhibit 22.

²⁷City Exhibit 2.

²⁸The arbitrator notes that the driving time between Monona and Lake Delton, according to Map Quest, is 57 minutes as compared with 1 hour and 6 minutes between Monona and Baraboo, proposed as a comparable jurisdiction by the Union. Baraboo, according to Map Quest, is 48.78 miles from Monona.

²⁹Although the arbitrator has found that Lake Delton is a comparable community without taking into account the index crime

statistics for the two communities, it should be noted that the two communities had a similar number of index crimes in 2003: 422 in Monona and 485 in Lake Delton. Source: OJA publication Crime and Arrests in Wisconsin - 2003, Table 1, pages 110 and 122.

The remaining jurisdictions claimed by the Union to be comparable that have not yet been discussed are Baraboo, Cottage Grove, Fort Atkinson, McFarland, Monroe, Oregon, Portage, Verona, Waunakee, and Dodgeville. All of them are within + or - 50% of Monona with regard to population, equalized value, and number of sworn officers on the police force.³⁰ They are all located less than 50 miles from Monona. The arbitrator, on the basis of these statistics, finds that the aforementioned jurisdictions are comparable to Monona for collective bargaining purposes.³¹

³⁰The comparisons regarding numbers of sworn officers on the forces of the named jurisdictions are made on the basis of the figures given in the unnumbered Union exhibit regarding external comparables. With regard to equalized value, based on the population and equalized value figures contained in City Exhibit 2 each of the named jurisdictions has a per capita or gross equalized value (and in many cases both) within + or - 50% of Monona's municipal equalized value.

³¹Although the arbitrator has accepted the City's argument that strong population growth serves to distinguish cities such as Sun Prairie and Fitchburg from Monona, it does not follow that all cities with strong growth rates are not comparable to Monona. The arbitrator relied on strong growth rate in addition to significant differences in size of population (more than 22 times as large) in finding that Sun Prairie and Fitchburg are not comparable to Monona for purposes of this proceeding. It does not follow, however, that growth rate by itself is sufficient to disqualify cities which are geographically proximate to each other and are of similar size from being considered comparable.

In summary, then, the arbitrator has found the following jurisdictions comparable to Monona for purposes of this proceeding: Baraboo, Beaver Dam, Cottage Grove, Dodgeville, Fort Atkinson, Lake Delton, Lake Mills, Marshall, McFarland, Middleton, Monroe, Oregon, Portage, Stoughton, Town of Madison, Verona, and Waunakee.

Request for Change in Status Quo

The City seeks a change in the status quo regarding payment for health insurance coverage. Past contracts have always provided that the City would pay the full amount of the premium for employees' single or family health insurance in an amount not to exceed 105% of the premium for the least costly plan. Now the City seeks to have employees contribute to the cost of their health insurance in the amount of ten percent of the premium for both single and family coverage.

The City contends that this is not really a change in the status quo because insurance premiums are increasing by at least ten percent a year so that, in any event, even if employees contribute to the premium, the City will be paying the same amount for insurance in 2005 as in 2004, if not more. In addition, the City argues, because of the \$647.73 lump sum payment to each employee and the granting of a wage increase that exceeds the cost of living no employee will receive a net decrease under the City's proposal. Therefore, the City maintains, there has been no change in the status quo.

The City's argument that adoption of its proposal will not result in a change in the status quo is not convincing. Its own calculations in Appendix G of its brief show that under its proposal unit employees will receive greater compensation in 2005 and a greater percentage increase in compensation over 2004 if employees are not required to contribute to the group health insurance premium than if they are required to pay 10 percent of the premium. This is true even though the Union's final proposal calls for a one-half percent smaller increase in wages in both 2004 and 2005 than the City's final offer. In the arbitrator's opinion this shows that the City proposal on health insurance if adopted would significantly alter the status quo.

Even without the calculations in Appendix G it is common sense that, in the future, all other things being equal, employees will take home less money if part of their group health insurance premium is deducted from their paycheck than if it is not deducted. The City has made clear that the \$647.73 payment to each employee as his or her share of the savings from switching to a new health insurance plan is a one-time event.

The City has not suggested that it will make similar payments in the future. Plainly then the City proposal on health insurance requiring an employee contribution to premium payment amounts to a change in the status quo.

Most interest arbitrators in Wisconsin apply a three-part test in determining whether it is proper to award a requested change in the status quo. In a recent decision, Unified Community Services of Grant & Iowa Counties, Dec. No. 30621-A (April 3, 2004), pp. 17-18, Arbitrator William W. Petrie expressed the rule as follows:

Wisconsin interest arbitrators generally recognize that the proponent of change in the negotiated status quo ante is normally required to establish three determinative prerequisites: **first**, that a significant and unanticipated problem exists; **second**, that the proposed change reasonably addresses the problem; and, **third**, that the proposed change is accompanied by an appropriate quid pro quo.

In the case before Arbitrator Petrie, the public employer wanted to expand the agreement whereby employees paid five percent of the medical premium for family coverage to also include single, employee/spouse, and employee/children categories of coverage. Arbitrator Petrie found that the first part of the test had been met, reasoning as follows:

The dramatic, ongoing, and frequently double digit escalation in the cost of public and private sector health care costs is far exceeding both the rate of inflation and/or what might reasonably have been anticipated by the parties when they had originally negotiated employer payment of the full cost of individual and/or family health insurance premiums. Accordingly the situation represents a significant and continuing mutual problem, and it clearly meets the first of the referenced status quo prerequisites. (footnotes omitted).

Many other arbitrators have also held that escalating health insurance costs is a legitimate reason for seeking a change in the existing status quo. See, for example, Waukesha County, Dec. No. 30468-A (Fredric R. Dichter, 2003) pp. 15-16.

In the present case health insurance costs have gone up steeply. For example, a commonly used health plan, the Dean Health Plan, climbed in premium from \$190.60 in 1999 to \$346.60 in 2004, for single coverage, an increase of 81 percent in five years. In the same period the premium for family coverage rose from \$481.94 to \$854.80, an increase of 77 percent. The

reasonable forecast for the next several years is continued double digit increases in insurance premiums. On these facts the arbitrator is persuaded that a serious problem exists justifying the City's effort to seek a change in the status quo.³²

A common method of determining whether a party's proposed change in the status quo is a reasonable solution to the perceived problem is to analyze the proposed change in terms of the statutory criteria, especially internal and external comparisons. For example, in Mellen School District (Support Staff), Dec. No. 30408-A (March 21, 2003) p. 42, Arbitrator Petrie quoted with approval an earlier decision of his in which he declared, ". . . While comparisons should not alone justify movement away from the negotiated status quo, if it has been established that the requisite significant and unanticipated problem exists, arbitral examination of comparables can go a long way toward establishing the reasonableness of a proposal for change."

The arbitrator will now discuss the statutory criteria relied on by the parties for the light they may shed on determining the reasonableness of the City's proposal regarding employee sharing of health insurance premium.

Interests & Welfare of Public & City's Financial Ability to Meet the Costs

The arbitrator believes that it would be in the interests and welfare of the residents of Monona for the law enforcement officers to share in the cost of health insurance. Fairness alone dictates that the City's residents should not have to bear the burden of double digit yearly increases in health insurance costs by themselves. The clear trend is for employees to share in the high costs of their health insurance, and no good reason has been given why the members of the police bargaining unit should be exempt from paying a reasonable part of the cost of this benefit that they receive. The real question is what is

³²In Village of Fox Point (Public Works Department), Dec. No. 30337-A (William W. Petrie, 2002) p.21, the arbitrator found that a 64 percent increase in the Village's monthly health insurance premium from \$550.64 to \$901.11 between 1997 and 2002 for family coverage "establish[ed] the existence of a legitimate and significant problem which requires attention."

reasonable.

Forcing an unreasonable contribution on the employees would be against the interests and welfare of the public because it could create morale problems if employees believe that they are asked to bear more than a fair share of the cost. The trick is to determine what is fair. The arbitrator finds that the interests and welfare of the public criterion does not favor one side to the exclusion of the other.

With regard to financial ability to meet the costs, the arbitrator believes that ability to pay is not an issue in this case because the costs of the respective offers for the contract under discussion are approximately the same. What the costs may be further down the road would be too speculative to be taken into consideration as a deciding factor in this case.

Private Sector Comparisons

The arbitrator is required to take into account, among other factors, the terms of employment of "other employees performing similar services and with other employees generally: . . . In private employment in comparable communities." The Towers Perrin 2004 Health Care Cost Survey of private employers, introduced into evidence by the City, shows that employee sharing of health insurance premium cost is common in private industry. The Survey found that in 2004 employees are contributing 19% for employee-only coverage and 22% for family coverage. In dollar terms employees contribute an average of \$58/month for employee-only coverage and \$194 for family coverage. What is more, the percentages rose by 1% in each category over the amount in 2003.

Although the Towers Perrin Survey does not give statistics specifically for Monona or any of the comparable municipalities, there is no reason to believe that Monona and the comparable communities differ significantly from the rest of the nation with regard to sharing health care costs in the private sector. The private sector criterion clearly favors the City position in this case.

Cost of Living

Both sides have accepted a figure of 2.3 or 2.4% as the expected increase in the consumer price index in the Milwaukee area for 2004, the closest geographical area for which BLS publishes a separate CPI. That figure is lower than either side's wage offer for 2004 or 2005. The City has offered a higher wage increase than the Union as part of the quid pro quo for the changes it seeks in the contractual health insurance provisions. With regard to wages, the cost of living is not a material factor.

With regard to the health insurance issue, however, the following observation by Arbitrator Petrie in Mellen School District (Support Staff), Decision No. 30408-A (William W. Petrie, 2003) p. 48, is pertinent: ". . . While the Employer's final offer costs slightly more in the short term than that of the Union, it is quite clear that its offer would result in significant cost control over health insurance over the long term. To this extent, the cost-of-living criterion supports the health insurance component of the District's offer."

Overall Compensation

The Union argues that if the City proposal were to be adopted, the net increase to employees would be only approximately 1% for those at the top of the patrol division or detective wage scale. It uses the following math to reach this conclusion. Under the City's offer a top-rated patrol officer will earn a monthly wage of \$3,853.31 in 2004 and \$3,988.17 in 2005, representing yearly increases of 3.5%. However, in 2005 the employee's share of the health/dental insurance premium (assuming a 10% contribution) will be approximately \$97.24. Deducting that amount from \$3,988.17 makes the employee's real monthly wage \$3,890.93 or an increase of only 0.98% over his 2004 wage.

The foregoing argument overlooks two important points. First, under the City's offer employees will receive a one-time cash payment of \$647.73 in 2005. Second, the employees' premium payment will be paid in pre-tax dollars. In its brief the City asserts that this should amount to a net tax saving of 21%, allowing 15% for income tax and about 6% for FICA. That seems to be a reasonable estimate. Twenty-one percent of the monthly payment of \$97.24 equals \$20.42. Subtracting that amount from \$97.24 leaves \$76.82. One twelfth of \$647.73 is \$53.97. Subtracting \$53.97 from \$76.82 leaves a remainder of \$22.85. It is that amount rather than \$97.24 that should be deducted from the top-rated patrol officer's 2005 monthly wage of \$3,988.17. Deducting \$22.85 from \$3,988.17 leaves \$3,965.32, which represents a 2.9% increase in compensation over the preceding year. Under the City's offer, therefore, a patrol officer at the top of the wage scale would receive an effective increase in compensation in 2005 of approximately 2.9%.

It is true that there would be no reason to expect a lump-sum payment in 2006. In 2006, however, a new contract year begins, and the Union will be free to negotiate a contract that provides a reasonable increase in compensation, taking the economic impact of its premium contribution into consideration. As previously noted, many contract negotiations are done on the basis of considering wages and health insurance as a single

economic item.

The arbitrator finds that the overall compensation criterion favors neither party.

Internal Comparables

Internal comparables are a very important criterion especially where benefits such as health insurance are concerned. The nonrepresented employees now pay a 10 percent share of their health premiums. In Waukesha County, Dec. No. 30648-A (2003) pp. 8-9, Arbitrator Dichter stated that the fact that nonrepresented employees paid the same insurance contribution as proposed in the County's final offer "carries little weight with this Arbitrator" because it "was not done as the product of negotiation" but "was simply imposed upon them." This arbitrator agrees with Arbitrator Dichter's reasoning.

There are five additional bargaining units besides the police unit: EMT/Firefighter employees; public works employees; library employees; police dispatchers; and office and maintenance employees. The fire and public works units are presently also in interest arbitration.³³ The City's final offers in the two other cases that are in arbitration are substantially identical to its proposal in this case with regard to health insurance contribution by employees. In negotiations with the three other units the City is also seeking 10 percent contribution toward health insurance premiums on the part of the employees.

Until the arbitrations and the negotiations for the other units are played out we do not know what the internal picture will look like. For that reason the arbitrator believes that the internal comparables criterion does not favor either side as of this writing.

External Comparables

Another very important criterion in interest arbitration both for wages and benefits is a comparison with external comparable jurisdictions. The City provided copies of the collective bargaining agreements for all of its proposed comparable jurisdictions in which the employees are represented by a labor organization. A collective bargaining agreement, of course, is the most reliable source regarding terms of employment

³³While writing this opinion the arbitrator was notified by the parties that the Union's final offer was awarded in the public works arbitration and the City's, for the EMT/Firefighters unit. These results do not change the arbitrator's analysis regarding the internal comparables factor.

of the employees it covers.

The Union did not provide contracts for all of its proposed jurisdictions. For many of the jurisdictions it provided only the results of a questionnaire presented to a contact person in the jurisdiction. In addition, the question intended to solicit information regarding premium contribution could have been misunderstood by the reader because it asked about copayment of insurance rather than contribution to premium. The term "copayment" is defined in The New Oxford American Dictionary (2001) as follows: "**copayment n.** (also **copay**) (of insurance policies) a payment owed by the person insured at the time a covered service is rendered, covering part of the cost of the service."

Since, however, the City has not questioned the accuracy of the Union's position regarding premium contribution for the latter's proposed comparable jurisdictions, the arbitrator will assume that the Union has accurately stated the amount of employee contribution, if any, in each of those jurisdictions.³⁴ The following table will summarize what, according to the information in the record, the situation is with regard to employee contribution toward health insurance premium in the jurisdictions found to be comparable to Monona communities. Listed in parentheses in the right-hand column for each jurisdiction is the source of the information given.

MUNICIPALITY	PREMIUM PAYMENT HEALTH INSURANCE
Baraboo	Employer pays 105% of premium of least costly plan (2002-2004 cba)
Beaver Dam	Employee pays 7.5% of premium effective July 1, 2003 (2002-2004 cba)
Cottage Grove	Employer pays full cost of premium (answer to Union questionnaire)

³⁴As noted in the next footnote, however, the collective bargaining agreement for Stoughton's police force, introduced into evidence as a City exhibit, shows that the Union provided erroneous information (against its own interest) regarding contribution toward premium payment by Stoughton patrol officers. This shows clearly why it is so important to provide collective bargaining agreements where they exist.

Dodgeville	Employer pays full cost of premium; employees pay drug copayment of up to \$240 for single and \$480 for family coverage (2004-2006 cba)
Fort Atkinson	Employer pays full cost of premium (answer to Union questionnaire)
Lake Delton	Employee pays 10% of premium (2003-2005 cba)
Lake Mills	Employee pays 5% premium contribution capped at \$15 per month for family coverage and \$7.50 per month for single coverage in 2005 (2004-2005 cba)
Town of Madison	Employer pays full premium for single coverage and 90% of premium for family coverage (2002-2003 cba)
Marshall	Employer pays 90% of premium of lowest cost plan (2003-2005 cba)
McFarland	Employee pays 5% of premium (answer to Union questionnaire)
Middleton	Employer pays 105% of premium of least costly plan (2002-2004 cba)
Monroe	Employee pays 10% of premium for preferred provider; 20% of premium for non-preferred provider (answer to Union questionnaire)
Oregon	Employer pays 105% of premium of least costly plan (2003-2005 cba)
Portage	Employer pays 100% of least costly premium; Employer requesting 5% employee contribution to premium in current negotiations (answer to Union questionnaire)

Stoughton	Employer pays entire premium cost; \$250 individual and \$500 family deductible (2003-2004 cba) ³⁵
Verona	Employer pays 105% of premium of least costly plan (2003-2004 cba)
Waunakee	Employer pays full cost of premium (answer to Union questionnaire)

Ten of the comparable jurisdictions (Baraboo, Cottage Grove, Dodgeville, Fort Atkinson, Middleton, Oregon, Portage, Stoughton, Verona, and Waunakee) have full payment of the least

³⁵Stoughton is a good example of where the Union's contact person was misled by the wording of the questionnaire. Thus the Union exhibit following the tab "External Summary" in the Union exhibit binder has "yes" under "Stoughton" to indicate that employees there share in the premium cost. Review of the collective bargaining agreement, however, introduced into evidence by the City, shows that the Employer pays the entire premium cost. The Summary Plan Description, however, also a City exhibit, shows that there are copayments under the insurance plan. Therefore the Union's contact person in Stoughton correctly answered "yes" to the question, "Do your employees pay a co-pay for healthcare insurance?" The arbitrator suspects that there may also have been a miscommunication with regard to Monroe, but in the absence of a contract must accept the unchallenged information in the Union exhibit.

costly premium (or 105% thereof) by the Employer. Seven of the municipalities have some form of contribution toward the premium by employees (Beaver Dam, Lake Delton, Lake Mills, Town of Madison, Marshall, McFarland, and Monroe). If Portage is successful in its effort to obtain five percent premium sharing by the employees, then there will be eight jurisdictions where employees share in the premium cost and nine where they do not.

Only four jurisdictions, however (Lake Delton, Marshall, Town of Madison (family coverage only), and Monroe³⁶) provide for a full 10 percent contribution toward premium cost on the part of employees. The arbitrator finds that the external comparables criterion favors the Union's position.

Reasonableness of Proposed Change in Status Quo

In Waukesha County, supra, Arbitrator Dichter found that the internal comparisons favored neither party and that the external comparisons slightly favored the Association. He stated, "In the absence of any other considerations, the Employer proposal would be rejected since this factor [external comparables] turns out to be the only factor that comes into play in this proceeding." Waukesha County, Dec. No. 30468-A (2003) at p. 14.

Arbitrator Dichter explained, however, that there was another analysis that had to be done before a decision could be made in the case, namely, "Status Quo & Quid Pro Quo." He noted that over the years Wisconsin arbitrators have used a three-part test "to determine whether a proposal from a party to change the status quo should be accepted."

Arbitrator Dichter found that increased insurance claim costs (the County was self-insured) had created a legitimate problem that had to be addressed--the first part of the test. He then went to the second part, whether the contract proposal "reasonably addresses the problem," and reviewed the evidence on the issue. The County had presented evidence that its proposal would "promote consumerism, and lower costs." The union presented testimony attempting to refute the County's contention. Arbitrator Dichter stated that he was "satisfied from the evidence that the purpose of these changes is to promote consumerism and to steer employees towards network providers and toward lower cost prescription drugs." He further stated:

³⁶With regard to Monroe, see the last sentence of the preceding footnote.

. . . The Arbitrator has no doubt that there may also be other ways to address the need. Even so, the question is not whether the proposal is the only way to deal with a situation, but whether the proposal being made "reasonably addresses the problem." It is my finding that it does. The proposal has passed the second prong of the test. Waukesha County, supra, p. 18.

The Dichter decision shows that a party may prevail on the "status quo" issue even if it cannot establish that either the internal comparables or the external comparables criterion--generally the most important in interest arbitration--favors its position. This arbitrator agrees with the approach of Arbitrator Dichter. To the extent that neither the internal comparables or external comparables factor favors the proposal advanced by a party to change the status quo, the arbitrator should hesitate to find the proposal reasonable. In appropriate circumstances, however, the arbitrator may find it to be reasonable.

As Arbitrator Petrie observed, "Wisconsin interest arbitrators operate as extensions of the contract negotiations process, and their normal goal is to attempt, as closely as possible, to put the parties into the same position they would have occupied had they been able to reach full agreement at the bargaining table." Mellen School District (Support Staff), Dec. No. 30408-A (William W. Petrie, 2003) p. 49.

Sometimes in negotiations an issue arises about which both parties have very strong feelings and are not willing to budge. Political considerations may also stymie a party's ability to be flexible. In private industry such a situation may cause one or the other party to resort to strike or lockout to break the impasse. Wisconsin law, however, does not permit police officers to strike or their Employer to engage in a lockout as part of the bargaining process. The interest arbitrator must step into the role of impasse-breaker at that time. The arbitrator believes that the following comments by Arbitrator Petrie are cogent in this connection:

[P]ublic sector interest arbitrators are inherently more receptive to proposed changes in the status quo ante than their private sector counterparts, due to the normal non-availability in the public sector of such economic weapons as strikes and lockouts. Without arbitral receptivity to proposed changes in public sector interest arbitrations, either labor or management could totally avoid even badly needed changes, through the simple expedient of refusal to seriously consider such changes. Mellen School District (Support Staff), Decision No. 30408-A (William

In this arbitrator's view, where a real problem exists that must be addressed for the good of everyone concerned, the arbitrator must be free to consider a party's proposed change that has not been adopted by the majority of comparable jurisdictions or by the majority of other bargaining units within the subject community.

In the case before Arbitrator Dichter, employees already paid 10 percent of the premium. Rather than increase the employees' contribution to premium, which was already higher than those of the comparable jurisdictions, the County proposed to add additional copayments, introduce annual deductibles for individual and family coverage, and adopt a 10 percent coinsurance requirement. Arbitrator Dichter found that the County's proposal was a reasonable means of promoting consumerism among the bargaining unit and thereby attempting to control spiraling cost increases.

In the present case employees pay no part of the health insurance premium. The arbitrator is persuaded that a sufficient number of comparable jurisdictions and of employers generally in both the public and the private sectors have adopted premium sharing to show that it is a reasonable means of confronting the problem of steeply escalating health insurance costs. The fact that premium contribution by employees is also the clear trend both among unorganized employees and in collective bargaining buttresses the conclusion that it is a reasonable method of addressing the problem of soaring insurance costs.

The arbitrator is not persuaded, however, that the record supports a finding that an increase to the extent of 10% is reasonable. Based both on the small number of comparable jurisdictions that require sharing to the extent of 10 percent and on the dearth of evidence in the record regarding the depth and scope of bargaining by the parties on this issue, the arbitrator is persuaded that he should not at this time award 10 percent premium sharing.

In the absence of evidence of more jurisdictions adopting a 10% contribution amount, the arbitrator believes that there should be evidence of a thorough vetting of the subject of cost-sharing in the negotiations and facts in the record providing a rationale for the specific choice of a 10% contribution rather than some other cost reduction approach so that an arbitrator is able to have some sense of assurance that there is a reasonable basis for supporting the Employer's choice of cost-control measures. For example, there is no evidence that the question of adding a deductible, increasing existing deductibles, or adding or increasing copayments was discussed in

the negotiations as a method in lieu of premium contribution, or in combination with premium contribution, of reducing the City's cost of health insurance.³⁷ In this connection, it is to be noted that City Exhibit 27 shows that by increasing the deductible for family coverage from \$100 in 2003 to \$500 in 2004, the City of Stoughton was able to reduce the premium from \$1,035.13 to \$855.42 for family coverage.

This arbitrator agrees with Arbitrator Dichter's statement, quoted above at page 33, that the question for the arbitrator is not whether the proposal before him is the only way to deal with the situation but whether it "reasonably addresses the problem." On this record this arbitrator is not able to go farther than to state that premium sharing would be a reasonable way to deal with the City's problem³⁸ of rocketing insurance costs. It is for that extra step of finding that ten percent would be a reasonable way of addressing the need that the arbitrator finds the record wanting. On the present record the arbitrator believes that it is premature to resolve the health insurance dispute between the parties by arbitral fiat. The arbitrator will reject the City proposal on insurance.

Sufficiency of Quid Pro Quo³⁹

³⁷See, for example, City of St. Francis (Police Department), Decision No. 26577-A (Edward B. Krinsky, 1991), where the arbitrator stated:

. . . This is not a case where there has been an impasse for years and the City has refused to budge or to consider changing its requirements. In the arbitrator's opinion, given the nature of the . . . issue, its complexities and ramifications, the parties should continue to strive to reach voluntary agreement on a solution. It is premature to impose such a change through arbitration. (Decision, p. 19)

³⁸It should be noted that in his decisions (e.g. Mellen School District (Support Staff), Decision No. 30408-A (2003) p. 43) Arbitrator Petrie refers to spiraling insurance costs as a "mutual problem." He is right in the sense that if the City is not able to function in an economically efficient and responsible way, everyone will eventually suffer, residents and employees. Nor will the Union as an entity be spared.

³⁹In City of St. Francis, Dec. No. 26577-A (Edward B. Krinsky, 1991) pp. 18, 20, Arbitrator Krinsky declined to decide whether the Association=s offered quid pro quo was adequate to support its proposal to change the residency requirement since he found that there was insufficient merit to the Association=s position that the residency requirement should be changed. In this case the

A word should be said on the subject of quid pro quo. The arbitrator has read many recent Wisconsin arbitration decisions (all of which may be found on the WERC web site on the Internet) involving change of the status quo in health insurance to get a feel for how Wisconsin arbitrators approach the question of quid pro quo in such a situation.

arbitrator believes that there plainly is some merit to the City's position to the extent that he has found that some degree of contribution toward payment of the premium by employees is warranted but that the City has not established that a 10% contribution would be reasonable. Under these circumstances the arbitrator believes that it is appropriate to address the issue of sufficiency of quid pro quo.

The arbitration decisions with which this arbitrator agrees, all by highly regarded experienced arbitrators, do not require a full quid pro quo in order to award a final offer permitting a change in the status quo with respect to contract provisions dealing with health insurance.⁴⁰ For example, in Oconto Unified School District, Decision No. 30295-A (2002) p. 26, Arbitrator Herman Torosian stated:

. . . [I]t is well established through numerous interest arbitration awards that a quid pro quo is required where one side, the Union here, seeks to change the status quo. There is no set answer as to what constitutes a sufficient quid pro quo. It is, in the opinion of the Arbitrator, directly related, inversely, to the need for the change. Thus, the quid pro quo need not be of equivalent value or generate an equivalent cost savings as the change sought. Generally, greater the need, lesser the quid pro quo.

In Village of Fox Point, Decision No. 30337-A (2002), Arbitrator Petrie adopted the Village's final offer requiring premium contribution by employees even though he found that the quid pro quo offered by the Village "would clearly fall short of being sufficient to justify a traditional, arms length, bargaining table proposal to eliminate or to modify a previously negotiated benefit, which did not involve a significant mutual problem and which entailed the amount of employee cost-sharing sought by the Village in the case at hand. . . ." Decision p. 24. Earlier in his decision Arbitrator Petrie stated:

. . . 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. Decision, pp. 22-23.

⁴⁰The arbitrator hastens to add that there are also highly regarded experienced arbitrators who do require a full quid pro quo in health insurance cases.

In further explanation of his decision Arbitrator Petrie stated:

. . . The undersigned is, however, faced with selecting between two final offers which significantly differ from one another, and has determined that the quid pro quo offered by the Employer is sufficient, under all of the circumstances of the case, to justify the Employer proposed employee sharing in the cost of group health insurance premiums. . . . Decision p. 24.

A third example of an arbitrator selecting a final offer that provided less than a full quid pro quo for changes in health insurance benefits is City of Marshfield, Decision No. 30726-A (Thomas L. Yaeger, 2004). Arbitrator Yaeger held that "the fact that the City's wage adjustment quid pro quo reimburses this unit's employees for \$.1926 per hour, approximately 73% of the alleged cost shift to them, does not seem unreasonable or insufficient under the circumstances of this case." (Decision, last page).

In the present case the City is offering a quid pro quo of \$57.06 per month in added wages (\$18.62 in 2004 and \$38.44 in 2005). Under the City's proposal, the estimated employee premium contribution in 2005, according to the Union's reasonable calculation as set forth in its brief, would be \$97.24 per month. This figure should be reduced by 21% to reflect the tax saving through a Section 125 plan, lowering the effective monthly payment by \$20.42 to \$76.82. The \$57.06 addition to employees' monthly wages under the City offer would be 74% of \$76.82.

This would provide full quid pro quo for a premium contribution of approximately 72% by the bargaining unit. In addition, in 2005 the estimated monthly insurance premium of \$972.40 will equal almost 25% of a top scale patrol officer's monthly wage of \$3,949.73. In this arbitrator's opinion, that fits Arbitrator Torosian's formula in Oconto Unified School District, supra, for allowing a lesser quid pro quo, namely, the greater the need, the lesser the quid pro quo.

This arbitrator also agrees with Arbitrator Petrie's assessment in Village of Fox Point, supra, and in other cases that soaring health insurance premiums are a "mutual problem."⁴¹

⁴¹In Waukesha County, Decision No. 30468-A (Fredric R. Dichter, 2003) p. 21, Arbitrator Dichter stated by way of dictum that there was "definitely merit to Arbitrator Petrie's analysis" in the Fox Valley case and that he "agree[s] with Arbitrator Petrie and his analysis" regarding permitting a somewhat less quid pro quo in the case of escalating insurance costs.

It is a problem for employees no less than for employers, and it is reasonable to expect employees to share in alleviating the problem. For these reasons, and on the authority of the cited arbitration decisions dealing with the issue of quid pro quo, it is the opinion of this arbitrator that the additional wage increases offered by the City in this case, together with the \$647.73 one-time payment, should be considered a reasonable quid pro quo for a 10% premium contribution.

Shift Scheduling

The parties are in agreement that the principal issue in this case is whether the bargaining unit employees may be required to contribute 10% to payment of the health insurance premium. The issue of shift scheduling will not play any part in the determination of the dispute, and the arbitrator does not rule on the merits of that issue.

Conclusion

The principal issue in dispute between the parties in this case is health insurance. The City seeks a change in the status quo of a longstanding contract term requiring it to pay up to 105% of the least costly health insurance premium for its law enforcement employees. The arbitrator has applied the traditional three-prong test in deciding that issue. In this arbitrator's opinion, the City has established that a real problem exists that requires a solution. It has also shown that its proposal to have employees contribute to payment of the insurance premium reasonably addresses the problem.

However, it has not shown that a 10% contribution by employees would be reasonable. The fact that very few of the external comparable jurisdictions require employees to contribute as much as 10% and the lack of evidence that there has been a careful and critical examination of the different possibilities available to the parties to reduce the financial burden on the City stemming from soaring insurance premiums persuade me that there is insufficient evidence to support the reasonableness of a 10% contribution.

By the time the parties receive this opinion it will be close to the beginning of the final year of the contract. Soon they will be in negotiations for a new contract. It is hoped that they will be able to voluntarily resolve the insurance issue at that time.

A W A R D

Upon consideration of all of the statutory criteria to the extent relevant, the evidence in the record, and the arguments of the parties, the arbitrator selects the Union's final offer, which together with all of their tentative agreements and their stipulations shall constitute the parties= 2004-2005 collective bargaining agreement.

Respectfully submitted,

Sinclair Kossoff
Arbitrator

Chicago, Illinois
December 16, 2004