

JUL 14 1983

## BEFORE THE ARBITRATOR

In the Matter of the Petition of

GREENDALE PROFESSIONAL FIRE FIGHTERS,  
LOCAL 1777, I.A.F.F.For Final and Binding Arbitration  
Involving Fire Fighter Personnel  
in the Employ of

VILLAGE OF GREENDALE (FIRE DEPT.)

Case no.: XXXIX  
No.: 30923 MIA - 723  
Decision No.: 20436 - AArbitrator: Stanley H.  
Michelstetter IIAppearances:Mr. Gary Vokovitch, State Representative, appearing on behalf of the Union.  
Lindner, Honzik, Marsack, Hayman & Walsh, S.C., Attorneys at Law, by  
Roger E. Walsh, appearing on behalf of the Employer.INTEREST ARBITRATION AWARD

On April 4, 1983, the Wisconsin Employment Relations Commission appoint the Undersigned as impartial arbitrator pursuant to S. 111.77 (4)(b), Wis. Stats., with respect to a dispute existing between Greendale Professional Fire Fighters, Local 1777, I.A.F.F., herein referred to as the Union, and the Village of Greendale, herein referred to as the Employer. Pursuant to an agreement of the parties to permit me to attempt to mediate the dispute, I conducted a mediation session in Greendale, Wisconsin, on May 13, 1983, immediately prior to the hearing. That mediation attempt proved partially successful, and the parties resolved all remaining issues except those specified below. Thereafter, but on the same date, I conducted the formal hearing in this matter. Each party submitted post-hearing briefs, the last of which was received June 10, 1983.

ISSUES

The sole issue remaining between the parties is the health insurance for retirees' benefit to be included in the parties' calendar 1983 agreement. The Employer's final offer is as follows:

1. Section 22.04 - Revise to read: Employees who retire under the Wisconsin Retirement Fund and who have acquired at such time thirty (30) or more days of accumulated sick leave shall be paid one-half of their accumulated sick leave, not to exceed 1,067 hours. In lieu of such lump sum payment, the retiring employee may request the Village to establish a health insurance premium account for him which will contain the amount he would otherwise have been paid under this Section. Such premium account shall be used only for the purpose of making payments of premiums toward the Village's group health insurance program on behalf of such retired employee. Payments of such premiums will be on the basis of whatever the premium cost per month is until such premium account is depleted, or the retired employee withdraws from or is no longer eligible to participate in the Village's group health insurance program. In the later event, the retired employee will receive a lump sum payment of any balance in his premium account. In the event the premium account is depleted the retired employee may continue to participate in the Village's group health insurance program provided he pays the premium in advance to the Village pursuant to Section 17.02. Pay for accumulated sick leave will be paid at the employee's annual base pay rate divided by 2,912 annual hours."

The Union's final offer is as follows:

"2. Amend Article XVII - Health Insurance - 17.02 to read:

"The Village agrees that employees with 10 or more years of service, or employees who qualify for disability benefits under Chapter 41 or S40.65 Wisconsin Statutes, who retire during the life of this contract shall be continued for the balance of their lives as members of the group health insurance plan applicable to the collective bargaining unit under the following conditions:

- a. The Village will pay 50% towards the cost of the premium.
- b. The coverage will be for retired employees and 'family'. Family as defined in the health plan in effect at time of retirement.
- c. Coverage would be in effect until retired employee and/or spouse qualify for Medicare.
- d. Coverage would not include a retiree's spouse or family after his death.
- e. Coverage would not include a retiree while he is covered by another health plan of equal or better benefit at no additional cost to him."

## POSITIONS OF THE PARTIES

At the outset of the hearing, issues arose as to the interpretation of the Union's proposal and as to the impact of those issues upon the arbitration process, and the subsequent interpretation of this proposal should it be adopted. The proposal of the Union provides the insurance benefit applies to employees who "retire" with ten (10) or more years of service, or who qualify for disability benefits under Chapter 41 or S. 40.65, Wis. Stats. The term "retire" is not defined, and two questions arose. The first question is whether employees who "retire" prior to being eligible for any pension benefits would qualify for the insurance benefit under this language. The second issue is whether employees who take an early retirement at reduced pension would be eligible. Effective shortly before this proposal was drafted, Wisconsin law had been amended to permit early retirement by protective service occupations at age 50 with reduced benefits. <sup>1/</sup> Neither the Union, nor, apparently, the Employer was aware of this amendment to permit early retirements until after final offers were certified. It was the Union's position that it never intended this language to apply to retirements occurring before age 55. It took the position that it should be permitted to explain the definitional ambiguity on the record, and that the arbitrator should assume, for the purposes of decision, that its statement would be the later interpretation of this language, should it be adopted. Based upon this interpretation, the Union takes the position that the paid health insurance benefit for retirees ought to be awarded on the basis of external comparisons. It compares Greendale to the south-side suburban communities of Cudahy, South Milwaukee, Greenfield, Oak Creek, West Milwaukee, and St. Francis. It argues Franklin should be excluded because of its different work schedule, and St. Francis should be excluded because it was excluded from comparisons made in several City of Cudahy arbitration awards. It urges the adoption of these comparables based primarily on proximity to Greendale. It notes that the Citizens Governmental Research Bureau, a non-profit organization, groups communities by their location to Milwaukee in its research data. It also offered data with respect to population, adjusted budgets, and total and component budget expenditures per person with respect to all of the Milwaukee area suburban communities to support its view. It also cited an award by Arbitrator Harry Graham <sup>2/</sup> between the instant parties and awards by other arbitrators involving other parties for the proposition that arbitrators have consistently used its set of comparables for comparison in these communities. It argues that all of these communities except St. Francis provide for a benefit at least as great as that which it seeks, and three have a much greater percentage payment than it seeks herein. The Union argues that this benefit is needed because fire fighting is the most hazardous of municipal occupations. It contends that in retirement, fire fighters have skills of limited marketability. Thus, it argues its retirees particularly need this benefit. It contends the Employer's offer merely rephrases an existing benefit of sick leave paid out on retirement with only slight improvement. It notes that many area communities have both sick leave paid out on retirement and health insurance for retirees.

The Employer takes the position that the Union's proposal clearly permits the payment of the benefit for those who retire at age 50, and that the Union admittedly unintentionally never presented this construction of its proposal to the Employer during negotiations. Because the matter was not first discussed in negotiations, the arbitrator should rule against the Union's proposal. The Employer further takes the position that the comparison group of communities should not be limited to merely the seven communities south of Milwaukee, but should include a group of seventeen municipalities, namely the seven included by the Union plus Franklin, Brookfield, Brown Deer, Glendale, Shorewood, Waukesha, Wauwatosa, West Allis, Whitefish Bay, and Fox Point. It denies that arbitrators have

<sup>1/</sup> S. 40.23 (1), Wis. Stats., (1981).

<sup>2/</sup> Village of Greendale (15363-A) (MIA-293), Graham, 6/77.

universally used "the southern seven" as a comparison group, and have used groupings, including other Milwaukee suburbs as well. Based upon its comparison group, it argues that eight of the seventeen (including Greendale) provide for direct employer payment of health insurance premiums in whole or in part for retirees, and thus, the comparables favor the Employer. In any event, of the eight, four limit the benefit to those who retire at age 55, while the Association's proposal relates to those who retire at age 50. It also argues that the Union's proposal should not be adopted because it relates to matters not discussed in negotiations and which the parties have not had an opportunity to explore the costing and other impacts of. Finally, it argues that in fourteen of the sixteen comparable communities, fire units have the same retirement health insurance benefit as the police units in the same cities. It argues that since the police unit has accepted for the 1983 contract year a benefit similar to that which the Employer is offering the Union herein, the Employer's offer should be adopted.

## DISCUSSION

### Interpretation

S. 111.77, Wis. Stats., forbids a party from unilaterally amending its final offer. Interest arbitrators are often called upon to make decisions as to the meaning of language in a proposal in order to make an award.<sup>3/</sup> In doing so, an arbitrator may ask a party to explain undefined terms or ambiguous language, and rely on such explanation, provided the explanation is not a subterfuge for changing its final offer. The instant proposal clearly applies the insurance benefit to those who "retire" with ten (10) or more years of service, or who qualify for disability benefits under Chapter 41 or S. 40.65, Wis. Stats. Two issues have arisen: Whether this provision applies the benefit to those who "retire" before they are eligible for any Wisconsin Retirement Fund benefit (before age 50), and those that retire on reduced pension before age 55 (ages 50 to 54).

The term "retire" is undefined, and the Union proposed to define the term as those who are eligible to receive full retirement benefits under the Wisconsin Retirement Fund (that would be those people who are currently eligible to retire at age 55). Ordinarily, grievance arbitrators give undefined terms an ordinary non-technical definition. Thus, using the standard statutory definition (eligibility to receive benefits under the Wisconsin Retirement Fund is an ordinary definition of the term "retire". However, the statutes in question do not distinguish between retirements between ages 50 and 55, and those after 55, except as to benefit level. Under the circumstances, I conclude that permitting the Union to define the term "retire" in a technical way not found in the law is tantamount to letting them amend their final offer. Even though the Union made a mistake of law as to the statutory definition, it can not be permitted to arbitrarily amend its final offer. Accordingly, for the purposes of this award and future interpretation of this provision, "retire" shall mean retirement with eligibility for any immediate benefits under the Wisconsin Retirement Fund.

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<sup>3/</sup> In this case, the parties also stipulated to vest the Undersigned with authority to make a fully binding interpretation of the Union's proposal.

External Comparisons

The following chart demonstrates the comparables offered by the parties and the data available to analyze comparison:

	Party Offering Comparison		Estimated Population January 1, 1980	<u>Health Insurance for Retirees</u>
	Employer	/ Union		
Cudahy	X	X	19,587	Employer pays 50% of premium for all retirees not employed elsewhere and not eligible for medicare.
South Milwaukee	X	X	21,006	Employer pays 70% of health premium for retirees 55 to 59 years old not eligible for medicare (100% thereafter until eligible for medicare).
Greenfield	X	X	32,009	Employer pays 100% of coverage for employees who retire at age 55 until 65.
Oak Creek	X	X	17,423	Employer pays 100% of premium for employees who retire until medicare, unless employee is employed full time.
West Milwaukee	X	X	3,719	Employer pays 50% for employees who retire that are not employed elsewhere with no medicare.
St. Francis	X	X	10,123	Employee may use 1/2 of accumulated sick leave, up to 37 1/2 days, to pay premiums.
Franklin	X		17,532	May participate in Employer's health plan at their own expense only.
Brookfield	X		33,761	Employee may participate in Employer's health plan at their own expense only.
Brown Deer	X		12,963	Employee may participate in Employer's health plan at their own expense only.
Glendale	X		14,099	Employee may participate in Employer's health plan at their own expense only.
Shorewood	X		14,770	Employee who retires may use all hours of accumulated sick leave over 1,800, not exceeding 444, toward health premiums.
Waukesha	X		51,138	Employee may participate only at his own expense.
Wauwatosa	X		51,206	Employer pays 50% of premium for employee retiring at age 55 until qualified for medicare or receiving coverage elsewhere.
West Allis	X		64,627	Employer pays full premium for all retirees age 55 or over, except those over 65 if eligible for medicare, remarriage by surviving spouse or other coverage.
Whitefish Bay	X		14,775	Employer pays 50% of premium for all retirees, except those on medicare.
Fox Point	X		7,554	Employee uses 50% of accumulated sick leave
Greendale	X	X	16,722	None

The set of comparables offered by the Union demonstrates that this benefit is one which is well established among south side suburbs. Five of seven other suburbs (including St. Francis and Franklin) <sup>4/</sup> have a benefit as favorable or more favorable than that sought by the Union, except to the extent that this benefit applies to persons who retire between ages 50 and 55. With respect to persons who retire between ages 50 and 55, four of the seven south side communities do not provide this benefit. Thus, with respect to that aspect, a reasonable set of south side comparisons favor the Employer's view. On the other hand, the largest reasonably possible set of comparables of Milwaukee area suburbs offered by the Employer, still slightly favors the Union's position. For the purposes of making the instant comparison, I find that at a minimum, the City of Waukesha should be excluded because it is in a different labor market than the other Milwaukee suburbs relied on by the Employer. Of the fifteen remaining suburbs the Employer cites, a bare majority of eight have benefits as good as, or better than, that which the Union requests, except as to the age 50 to 55 group. Thus, a reasonable set of comparables based on location, either restricted to the south side of the City of Milwaukee, or involving a large number of the suburbs of Milwaukee, would, at least, minimally favor the Union's position, except that no such set favors extending the benefit to age 50 to 55 year old retirees.

#### Internal Comparisons

The evidence reveals that the Village of Greendale police sought a similar benefit to that requested by the Union in their 1982 negotiations. In the 1982 agreement between the Village and police unit, those parties adopted, for the first time, a benefit similar to the Employer's offer herein. At that time, the fire unit did not have any similar benefit. The police again raised the issue in their 1983 negotiations, but those parties settled by slightly improving the amount of sick leave which can be used for this benefit. There is no evidence as to whether the police settlement is in all other respects uniform with the fire settlement on all other issues or evidence of a uniform pattern of settlements among Village units.

The Employer offered evidence indicating that there tends to be uniformity between police and fire units of the same community among the various comparable communities with respect to this benefit. While the fact that the police have accepted a benefit similar to that offered by the Employer herein favors the Employer's position to some extent, I conclude that that comparison should be given very little weight. The undisputed evidence is that in 1982 the police and fire units in Greendale negotiated different benefit packages. That bargaining history, plus the absence of evidence of a uniform pattern of settlement in Greendale to which the Greendale fire fighters should be held, strongly suggests that there is no reason to impose one aspect of the police settlement on the fire fighters.

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<sup>4/</sup> I conclude for comparison of health insurance benefits, Franklin and St. Francis should be included when making the area comparison herein because they are south side communities. Franklin's different work week would not affect this benefit. No evidence has been adduced distinguishing St. Francis, except population. There is no reason to exclude a smaller community when substantially larger ones are used.

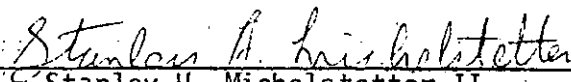
Conclusion

S. 111.77, Wis. Stats, specifies the factors which must be considered, but does not assign the weight to be given the relevant factors. Internal and external comparisons are the only factors which have been argued by the parties. I have concluded that the weight of the external comparability factor outweighs the internal comparability factor. As thus weighted, the overall weight of the two relevant factors favors the Union's position. This would not be true if the applicability of the benefit to retirees in the 50 to 55 age group were the sole factor to be considered. Because no person in the unit will reach age 50 during this agreement's term, and because the Union never intended the benefit to apply to person's age 50 to 55, the Undersigned has concluded this aspect should not be given determinative weight, but should be left to the parties to correct in their negotiations leading to the next agreement with my note that under the current facts, were the applicability of this provision to the 50 to 55 age group the sole issue, the Undersigned would have found for the Employer.

AWARD

Based upon the foregoing, the Undersigned finds that the final offer of the Union is to be adopted.

Dated this 12th day of July, 1983, in Milwaukee, Wisconsin.

  
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Stanley H. Michelstetter II  
Arbitrator