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WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of an Arbitration between

VILLAGE OF GREENDALE (FIRE DEPARTMENT)

and

GREENDALE PROFESSIONAL FIRE FIGHTERS LOCAL 1777, IAFF

Case 54
No. 39920 MIA-1291
Decision No. 25400-A

Appearances:

Mr. Roger E. Walsh, Attorney, Lindner & Marsack, S.C., representing the Employer.

Mr. Michael Dobish, State Representative I.A.F.F., representing the Union.

Before:

Mr. Neil M. Gundermann, Arbitrator.

ARBITRATION AWARD

On May 16, 1988, the Wisconsin Employment Relations Commission appointed the undersigned as an impartial arbitrator pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act with respect to a dispute existing between the Village of Greendale and the Greendale Professional Fire Fighters Local 1777, IAFF. A hearing was held on August 10, 1988 and the parties filed post-hearing briefs.

City's Final Offer:

1. Article XXIII, Section 23.01 - Uniform Allowance. Raise annual allowance from $200 to $225.

2. Article XXV, Section 25.01 - Longevity Allowance. Raise maximum allowance from $20 per month after 20 years to $25 per month after 25 years.

3. Article XVII, Section 17.01, Health Insurance - Premium Amount. Replace provision "Village will pay the full cost of such HMO coverage" with the dollar amount of the highest 1988 HMO premiums with a provision that if, during the contract term, the premium cost exceeds the stated dollar amount, the dollar amounts will be increased to the new level.

4. Article XVII, Section 17.01, Health Insurance - Retiree Participation. Add a provision allowing retired employes who are not covered under Section 17.02 to continue to participate in the Village's group health insurance program.

5. Article XVII, Section 17.02(a), Retiree Health Insurance. Provide that "Village will pay seventy-five percent (75%) of the specific dollar premium listed in Section 17.01 in effect on the date of retirement" instead of "the Village will pay seventy-five percent (75%) of the cost of the premium."

6. Article XXII, Section 22.04, Sick Leave - Maximum Payout of Unused Accumulation on Retirement. Increase maximum number of hours of unused accumulated sick leave payout from 420 hours to 465 hours.

7. Article XXII, Section 22.04, Sick Leave - Use of Sick Leave Payout for Retiree Health Insurance. Provides that at the employe's option, this unused accumulated sick leave payout can be put into an account and be used to pay the retirees' health insurance premium (or balance of premium if the retiree is eligible for Village payment under Section 17.02).

8. Wages:

Effective 1/1/88, increase all rates by 3%
Effective 7/1/88, increase all rates by 1%
Effective 1/1/89, increase all rates by 4%

Union's Final Offer:

1. Wages:

Effective 1/1/88, increase all rates by 3%
Effective 7/1/88, increase all rates by 1%
Effective 1/1/89, increase all rates by 4%

2. Status quo on other provisions.

EMPLOYER'S POSITION:

It is the Employer's position that the arbitrator should select its final offer as the one most compatible with the statutory factors. Of the seven issues in dispute, five represent improvements in benefits offered by the Employer, one is more an issue of form than of substance, and one issue involves a potential reduction in benefits.

The Employer's proposal to increase the annual uniform allowance from $200 to $225 is a response to the Union's request to increase it from $200 to $250.

Additionally, the uniform allowance paid fire fighters in 15 Milwaukee area municipalities averages $256; therefore, the Village's proposal brings the allowance closer to the average of the comparables.

The Employer has proposed an increase in the maximum payment for longevity allowance from $20 per month after 20 years, to $25 per month after 25 years. The Employer's proposal grants 50% of what the Union initially requested, and brings the Village allowance in line with the most common type of longevity allowance paid in the comparables.

In its initial proposal for the 1988-89 agreement, the Union requested that the 10-year eligibility requirement for retirees' ability to continue in the Employer's health insurance program and for the Employer's requirement to pay a portion of the retirees' premium be eliminated. The Employer's proposal provides a contractual commitment allowing those retirees who are not eligible for the Employer's payment of the health insurance premiums to continue participating in the Employer's health insurance program. The Employer's proposal reflects a significant response to the Union's initial bargaining request and is consistent with provisions granted by the comparables.

Among the 15 Milwaukee area comparable communities, seven allow retirees to use unused sick leave payout for health insurance. The Employer notes this can be a significant benefit because of the Federal and State income tax savings to the retirees. This provision is contained in the contract with the Employer's other protective service unit--the police officers.

The Employer's proposed increase in the number of maximum hours of payout for accumulated sick leave from 420 hours to 465 hours brings this benefit in line with the comparables that provide for these types of payouts. The purpose of the proposal is to bring the dollar amount more in line with the maximum payout granted the police officers.

The insertion of the specific health insurance premium dollar amount instead of "full" is supported by internal comparability, and, in fact, is an issue more of form than substance. The Employer is proposing to insert a specific dollar amount of $92.62 per month for single coverage and $238 per month for family coverage. These dollar amounts cover the full premium cost of any of the Employer's HMO plans for 1988. Additionally, the Employer agrees to pay any increase in premium for any HMO plan which exceeds these dollars, and the contract

provision will automatically be amended to reflect the new amounts. The Employer submits that between January 1, 1988 and December 31, 1989, there is absolutely no difference between the two proposals. The only possible impact adverse to the employe would occur if the parties did not settle a successor contract by December 31, 1989; the Employer's liability for health insurance premium payment during the hiatus period between contracts would be limited to the dollar amounts listed in the contract. The Employer submits its proposal is in line with the provisions contained in other collective bargaining agreements the Employer has with its employes.

The Employer and Local 609, AFSCME, are unsettled for the 1988-89 agreement. One of the issues in dispute is the specific dollar amount inserted into the agreement. The Employer is proposing the same dollar amount as is contained in the police officers' and clerk dispatchers' contract and in its final offer to the fire fighters.

The Employer asserts that many arbitrators, including this arbitrator, rely more heavily on internal comparables in health insurance premium contribution disputes. City of Madison (Police), Dec. No. 16034-A; Monroe County (Human Service), Dec. No. 23807-A.

The Employer emphasized that two of the bargaining units have voluntarily agreed that their 1988-89 agreements will contain the identical provision regarding the dollar amount of the health insurance premiums paid by the Employer that the Employer is proposing here. Additionally, the final offer in the AFSCME interest arbitration contains a provision listing the same specific dollar amounts. This internal comparison is a significant factor in favor of the Employer's final offer.

According to the Employer, it has offered a higher than average wage settlement. The parties have agreed upon the size of the wage increase for both 1988 and 1989. A comparison of the 1987 year-end wage rates for the 13 municipalities settled for 1988 indicates that the average monthly year-end wage rate is $2,427. The Employer's rate of $2,412 per month was $15 per month below the average. The average increase in the monthly year-end rate for 1988 for these 13 municipalities is $89, or 3.67%. The Employer's 1988 increase is $97 or 4%; and its 1988 year-end rate of $2,509 will be only $7 per month below the 1988 average monthly year-end wage rate of the 13 other municipalities. The

Employer's wage settlement was one of the highest in the area for 1988, and based on the settlements so far for 1989, the Employer's wage settlement will again be one of the highest, if not the highest. This factor is important for analyzing the impact of the Employer's final offer on Employer payment of retiree health insurance.

The Employer has proposed that it will pay the following amount of health insurance premium for retirees:

> 75% of specific dollar premium in effect on the date of the retirement; instead of
>
> 75% of the cost of the premium.

The Employer acknowledges that to gain a revision of this nature through interest arbitration it has the burden of showing the reasonableness of its proposal.

Providing health insurance for retirees is an extremely costly benefit, especially under the provisions contained in the prior agreement. The interpretation of this provision is that the Employer is required to pay 75% of the premium cost, including increases, for the retired fire fighter. Although the current premium cost of health insurance is $2,856 per year, in ten years that cost, at an assumed annual increase of 10% per year, would grow to $7,408 per year. The Employer's obligation would then increase from $2,142 in 1988 for a retiree who retired in 1988, to $5,556 for the same retiree in 1998.

The Employer emphasized that it did not voluntarily agree to the provision providing for it to pay 75% of the cost of a retiree's health insurance premiums. This provision was imposed upon the Employer by an arbitrator in 1983. After having the provision imposed on it by arbitration in 1983, the Employer negotiated a similar provision with its police officers. In 1985, one of its police officers retired and became eligible for the Village payment of an amount equal to 50% of his health insurance premiums. The Employer interpreted Section 16.02A to limit its liability to an amount equal to 50% of the premium cost in effect on the date of retirement, and has continued to pay only that amount. The Employer's payment has remained constant at $106.65 per month, while the employe's cost has increased from $106.65 in 1985 to $127.66 in 1988.

In 1987, the Fire Fighter's Union pointed out that under Section 17.02A, the Employer's obligation was not limited to the payment of 75% of the premium in effect at the time of an employe's retirement. The Union stated that the

Employer had to pay 75% of the total premium cost, including any increase in costs since the date of retirement. After reviewing the agreement, the Employer concluded the Union would most likely be upheld if the matter was taken to grievance arbitration. The Employer then paid 75% of the increased cost of a retired fire fighter in 1987 and 1988. Since the Employer did not become aware of the Union's interpretation of Section 17.02A until after the execution of the 1986-87 agreement, the Employer's only recourse from this financially disastrous interpretation was to obtain a modification of it through negotiations. The instant negotiations were the first such opportunity.

There was little, if any discussion of the provision during the negotiations which resulted in the 1983 contract. This was indicated by the controversy over the meaning of the word "retiree" that was discussed in Arbitrator Michelstetter's award. The language of Section 17.02 could be interpreted to apply to an employe who retired between ages 50 and 55 even though the Union did not intend the proposal to apply to those under 55. Michelstetter stated that this issue "should be left to the parties to correct in their negotiations leading to the next Agreement." Significantly, the provision was amended in the next agreement to list "age 55."

The tremendous cost differential of the Union's interpretation of Section 17.02A is apparent. The Employer has provided unrefuted evidence which points out this differential. Clark Slipher, an actuary, prepared several exhibits and gave testimony regarding this cost differential.

There are two different ways to show this differential. Both approaches utilize an interest rate increase of 8.5% per annum and a health insurance premium increase of 10% per year. The first compares a lump sum amount needed to be set aside in 1988 which, together with interest, would be sufficient to fund the post-retirement health insurance costs of the 15 fire fighters on the Employer's payroll in 1988. Under the Union's offer, the Employer would have to set aside $312,455. Under the Employer's offer, that amount would be reduced to $210,853, approximately one-third less cost.

The second method of indicating the cost differential is to compare the annual amount for each of the next 20 years which must be deposited in an interest-bearing account to fund the post-retirement benefits for each of the Village's fire fighters. Under the Union's offer, the cost in the first three years

is $50,234 per year. During the remaining 17 years, the annual costs vary from a low of $40,512 to a high of $79,383. Under the Employer's offer, the annual deposit amount for the first three years is $33,904, one-third less than the Union's proposal. During the remaining 17 years, the annual cost varies from a low of $27,340 to a high of $53,582. The total cost of annual deposits over a 20-year period is $1,124,720 under the Union's offer, and $759,122 under the Employer's offer.

The Employer emphasized that under its offer it is still a very substantial cost. The deposit amount for 1988, 1989 and 1990 of $33,904 amounts to an average of $2,260 for each of the 15 fire fighters in the bargaining unit. This constitutes an amount equal to a 7.8% increase over the 1987 annual top-step fire fighter salary of $28,944. Under the Union's offer the $50,243 annual deposit averages $3,349 per employe, or an amount equal to an 11.6% increase over the 1987 top-step fire fighter--almost three times the agreed-upon increase in salary in 1988. The cost to the Employer of providing health insurance for its 15 active fire fighters would be $35,719. Under the Employer's offer, the annual cost in 1988 to provide post-retirement health insurance is $33,904, only $1,815 less than the cost of providing health insurance to active employes. Under the Union's offer, the annual cost for 1988 to provide post-retirement health insurance is $50,234, or 41% more than the cost of providing health insurance for active employes.

The Union argues that the Employer does not have to pre-fund the cost but can merely pay it on a "pay-as-you-go" basis. In that way, the cost is only $2,108.76 for the fire fighter who is retired. The Employer submits that such argument amounts to nothing more than financial irresponsibility. As pointed out by Slipher, the Financial Accounting Standards Board is expected to release a rule requiring private sector employers in the next year or so to list these post-retirement costs as current annual liabilities.

In 1983, when Michelstetter imposed this onerous provision on the Employer, 8 of the other 15 municipalities in the area provided some type of payment of health insurance premiums for retired employes. The Union wants to limit the comparables to seven southside Milwaukee area municipalities. However, West Allis and Franklin also could be considered as "southside" municipalities, especially on the issue of post-retirement health insurance premium payments. Michelstetter considered all 15 municipalities when he imposed this provision in

1983. There is no reason now to exclude them from consideration. Fire fighters in all of these municipalities can retire at age 55. In 1988, 12 of these 15 municipalities now have a similar type provision. What is significant is that three of the four municipalities that added this provision since 1983 all agreed to pay a specified percentage of the health insurance premium, but limited this payment to a percentage of the premium amount in effect on the date of retirement.

In 1983, 9 of the 10 municipalities that had these types of benefits had no limitation similar to those sought by the Employer here. In 1988, 7 of the 15 municipalities that have this type of benefit now have such limitations, and if the other two municipalities were to accept even the latest Union offer, 9 of 17 municipalities would have limitations similar to those proposed by the Employer in these proceedings. The Employer submits its proposal is clearly in line with the trend in post-retirement health insurance premium payment benefit, both in fire fighters' and police officers' contracts in the Milwaukee area.

On the basis of the above, the Village requests the arbitrator to select the Employer's final offer.

UNION'S POSITION:

It is the Union's position that its final offer more closely comports to the statutory criteria than does the Employer's final offer, and therefore the Union's final offer should be awarded in the instant case.

In 1983, the Union filed for interest arbitration on the sole issue of whether retirees should receive health insurance benefits. The Union prevailed in a case decided by Arbitrator Michelstetter and the Union's final offer, which provided the Village would pay "50% toward the cost of the [health insurance] premium" for retirees, was awarded. In 1984, the Union agreed to limit its "full cost" contract language previously contained in the agreement by conceding to a cost-containment provision that the Employer would henceforth pay only the "full cost" of "HMO coverage," a less expensive coverage. In 1986, the parties voluntarily agreed that the Employer would pay 75% of the cost of the retiree's health insurance premiums. Just two years after this 1986 agreed-upon improvement in retiree health insurance benefits was negotiated, the Employer now seeks to recapture the benefits it freely negotiated and to which it voluntarily agreed. The Employer also seeks to limit the effect of the 1983 arbitration award won by the Union.

Historically, arbitrators have cited and approved the same southside fire department comparables argued to be appropriate by the Union in this case. The Employer has provided no evidence to support this arbitrator's rejection of Arbitrators Graham and Michelstetter's specific, prior approval of these southside fire department comparables as applied to this Department.

A review of the comparables establishes five of the six comparables provide the Employer will pay the full amount of health insurance premium for full-time employes with no dollar cap on the premium amount. The only comparable to state a dollar cap is St. Francis, where the premium cost for employes is significantly higher than the premiums in effect for the Employer in 1988. All six of the comparables also provide full payment for all health insurance plans available rather than just HMO. Additionally, five of the six comparables provide that the Employer will pay an equal or greater percentage of premiums toward continued health insurance for retirees than the Employer now provides. Five of the six comparables have no dollar cap on the premium amount paid by the Employer toward health insurance after retirement. Five of the six comparables have higher premium costs for HMO, and four of the six comparables have higher premium costs for conventional health insurance plans than does the Employer.

The Union submits it is merely attempting to avoid slipping in the ranking among the comparables by final offering the status quo on the issue of retirees' health insurance and the continuation of the "full cost" health insurance provision paid by the Employer for employes.

Arbitrators have traditionally refused to change existing insurance benefits. As Arbitrator Petri stated in City of Cudahy, Dec. No. 19375-A:

> "It must be recognized, however, that any interest arbitrator is reluctant to overturn established practices or benefits, unless the arbitral criteria are very clearly and persuasively met . . ."

Additionally, where benefits have been won through interest arbitration, and parties have voluntarily agreed to improve on those benefits, arbitrators look very closely at the case of the proponent of the change to assure that a change is truly justified.

The Union submits that the Village has failed to demonstrate a need for a change in the area of retiree health insurance premiums, or a change in the longstanding provision of the agreement which provides the Employer will pay the "full cost" of health insurance for employes. Significantly, the Employer has experienced only a 17.77% increase in premiums over the past five years, which represents an increase in premium of only 4.4% annualized.

The Union notes that unlike the long-accepted comparables proposed by it, there is no precedential basis for 9 of the 15 external comparables submitted by the Employer. Even assuming the arbitrator approves of the Employer's 15 "comparables" in this case, the facts show that 7 of the 15 comparables have better health insurance benefits for retirees than the Employer has incorporated in its final offer. In Cudahy, the employer pays 75% of Blue Cross premium or 100% of HMO premiums for employes retiring after 1/1/87 with no dollar cap. In Greenfield, the City pays full premium with no fixed dollar cap for retirees. In Oak Creek, the City pays full premium with no fixed dollar cap, plus the City pays for extended medicare coverage for retirees after age 65. In South Milwaukee, the City pays 75% of the premium for retirees age 55 to 59, and 100% of premium for retirees age 60 to 64, with no fixed dollar cap. In Wauwatosa, the City pays full premium in the year of retirement for those retired after 1/1/86, and in subsequent years the City pays up to 110% of the preceding year's premium. In West Allis, the City pays the full premium in effect on the day of retirement. In West Milwaukee, the City pays 75% of the premium for retirees with no fixed dollar cap. Thus, the Employer's own comparables do not demonstrate that the Employer should prevail in this case.

Although the Employer seeks to establish comparability between the Police and Fire Departments, the Employer's final offer in Section 17.02A provides that the Employer will pay 75% of the "specific dollar premiums listed in 17.01 in effect on the date of retirement." In contrast, the police officers' agreement at Section 16.02A provides that the Employer will pay 75% of the "specific dollar premiums listed in 16.01." There is no mention in the police agreement of tying retiree insurance payments to the premium in effect on the date of retirement. Thus, the police agreement cannot fairly be compared to the Employer's final offer in this case. Since police retiree premiums are tied to the premiums listed in the agreement, one could safely assume that the Police Association would simply renegotiate the premiums listed in Section 16.01 (for employes and retirees) at each new round of negotiations.

It is further argued by the Union that the facts demonstrate that the Greendale police have lagged behind their own external comparables and benefits, while the fire fighters have kept pace with their comparables. In five of six comparable police departments, the employers pay equal or greater percentage of health insurance premiums for retirees than does the Employer under the current agreement, and four of the six comparable police departments have no fixed dollar cap on health insurance premium amount paid by the employer for retirees.

As Arbitrator Michelstetter stated in Village of Greendale, Dec. No. 20436-A, in addressing himself to the same issue (retiree's health insurance):

> "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."

The Union submits those words are as true today as they were in 1983, and there is no reason to impose one aspect of the police agreement on the Greendale fire fighters.

The Union argues that historically the Employer has negotiated different fringe benefit packages with each of its various unions. In 1987, the Employer paid the full premium of the conventional health insurance plan for members of the DPW bargaining unit. In that year, the Employer paid only the full cost of the highest HMO for Fire Department employes, a less costly premium. The collective bargaining agreements between the Employer and its various unions contained different language regarding changing insurance carriers, coverage for retirees, and cancellation of retiree's insurance by carriers. It is further noted by the Union that the dispatchers receive a split increase in 1989 of 3% effective 1/1/89, and 2% effective 7/1/89 for a 5% increase in base pay six months into the year. In contrast, the Employer has offered the fire fighters 4%. Thus, the Village has refuted its own arguments by its actions.

It is significant, according to the Union, that even if the Employer's final offer is selected, in the area of clothing allowance the improvement proposed

does not bring the fire fighters up to the level of the police. Furthermore, such an increase in clothing allowance would not even raise the fire fighter up to the average yearly allowance paid by the employers in the comparable group. Finally, in regard to the increase in longevity pay for fire fighters proposed by the Employer, although it would bring the fire fighters' longevity benefit up to the level already enjoyed by the police, it would cost the Employer nothing until September, 1991, when one person would become eligible for the 25-year benefit. Thus, the clothing allowance and longevity benefits offered by the Employer would bring the fire fighter a total of $375 per year of the agreement, $25 per unit member per year.

Assuming the Employer's figures on projected health insurance costs for retirees are correct, the Employer has a liability under the terms of the current agreement to pay $312,455 for post-retirement insurance benefits. Under the Employer's final offer the Employer's post-insurance obligation would be reduced to $210,853, a savings to the Employer of $101,602. Thus, if the Employer's final offer is adopted the Employer would gain back $101,602 previously negotiated health insurance benefits. By subcontracting the total cost of the base wage increase from the $101,602 gained by the Employer, one can easily see that the Greendale fire fighters would suffer a net concession of $68,551.56, or $4,570.11 per unit member over the term of the agreement. Additionally, the Employer's final offer would effectively shift any increase in post-retirement health insurance costs away from the Employer and onto the backs of retirees, just five years after the Union won a retirees' health insurance benefit in arbitration and just two years after the Employer voluntarily agreed to increase the percentage of retirees' premium paid by the Village from 50% to 75%.

The Union is also concerned about the effect of the Employer's proposed language which states in part that a retired employe may continue in the group plan "provided the insurance carrier agrees to permit the retired employee to continue in such group program." This language appears to give the carrier an unfettered option to cancel or refuse to continue a retiree or retirees as a group in the group health insurance plan. The Union claims that the language final offered by the Employer on this point is not supported by the comparables. If the Village were to prevail, retirees could be left with no insurance coverage.

The Union respectfully requests that the arbitrator find the Union's final offer is the more reasonable, and that he incorporate its final offer into the parties' agreement.

DISCUSSION:

A number of the issues in this case constitute benefits being offered by the Employer which are not being sought by the Union. The Employer is offering these benefits, which include improvement in clothing allowance, longevity allowance, payment for additional accumulated sick leave at time of retirement, and eligibility to remain in the group insurance plan after retirement, as the quid pro quo, along with wages, for certain changes the Employer is seeking in the area of health insurance. It is these changes in the health insurance provision which has precipitated the arbitration proceedings.

Specifically, the Employer is seeking to modify Section 17.01 by replacing the term "will pay the full cost of such HMO coverage" with a specified dollar amount which will, for the term of the agreement, be adjusted to reflect the full cost of the HMO coverage. The Employer is also seeking to modify the language contained in Section 17.02, which provides the Employer "will pay 75% towards the cost of the premium," to provide the Employer will pay 75% toward the cost of the premium in effect at the time of retirement. Essentially, the Employer is seeking to freeze its insurance liability for retirees at 75% of the premium being paid at the time of retirement.

The payment of insurance for retirees was incorporated into the agreement as a result of an arbitration award issued in 1983. At that time the Village began paying 50% toward the cost of a retiree's health insurance premium. During the negotiations which resulted in the 1986-87 agreement, the Employer agreed to increase the amount paid toward health insurance premiums for retirees from 50% to 75%.

Both parties point to external comparables in support of their respective positions; however, they disagree as to which comparables should be given the greatest weight. The Employer points to 15 comparables which it contends are the most appropriate and which were considered by the arbitrator in 1983. (In 1983, the arbitrator excluded Waukesha from the list of comparables urged by the Employer.) The Union argues that the universe of comparables should be limited to the six southside suburbs which have previously been considered by arbitrators.

A review of Arbitrator Michelstetter's 1983 decision indicates he used both sets of comparables in arriving at his decision. There is no indication he gave greater weight to either set of comparables.

A review of the comparables submitted by the Employer, Exhibit No. 22, establishes that of the 15 comparables 7 pay "full" health insurance premiums without any reference to dollar amount. Two of the comparables pay the highest HMO rate or full HMO rate. It appears that only Franklin, Oak Creek and St. Francis have specific reference to dollar amounts in their agreements. Thus, based on the Employer's own comparables, it must be concluded that the inclusion of dollar amounts, even though the dollar amount represents the full premium, is the exception, not the rule.

An analysis of the practices relating to the payment of retiree health insurance is somewhat more difficult due to the wide range of programs. Under the prior agreement the Employer paid 75% of the retiree's health insurance premiums. The following comparables pay more toward retirees' insurance premiums for employes retiring in the future.

1.	Cudahy	75% Blue Cross Premium 100% HMO or WPS premium
2.	Greenfield	City pays full premium
3.	Oak Creek	City pays full premium
4.	South Milwaukee	City pays 75% of premium age 55 thru 59 City pays 100% of premium age 60 thru 64
5.	Wauwatosa	City pays full premium in the year of retirement; in subsequent years, up to 110% of preceding year's premium
6.	West Allis	City pays an amount equal to the full premium in effect at date of retirement

West Milwaukee has the same provision that has been in the Employer's contract since 1986; the Employer pays 75% of the premium.

In terms of sheer numbers, 6 of the 15 comparables pay a greater share of a retiree's insurance than does the Employer; one pays the same; and the remaining 8 pay less.[1] These figures certainly do not establish a clear and prevailing practice regarding the payment of retirees' health insurance premium. This becomes particularly apparent when reviewing those comparables that make

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1. The City of Glendale freezes a retiree's contribution at 50% with the City paying any increase until the employe reaches age 59. After reaching age 59, the employe will pay the "normal employee contribution." It does not specify if this is the single rate.

no contribution to a retiree's health insurance premium as compared to those comparables that pay 100% of the premium.

If the six comparables urged by the Union are considered, Cudahy, Greenfield, Oak Creek, and South Milwaukee all pay more toward a retiree's insurance premium than does the Employer. West Milwaukee pays the same and St. Francis pays less.

The evidence establishes that while the Employer is somewhat more generous in the area of payment for retirees' insurance, it is by no means the leader. If the current language is retained, the Employer will remain somewhat above the average. In light of the Employer's position among the comparables, the Employer has not met its burden of establishing why the insurance language relating to retirees should be changed.

The Employer asserts that under the current language it will incur substantial liability to fund the insurance premiums for retirees. It is further noted by the Employer that the payment of retirees' insurance premium was imposed upon it by an arbitrator; it was not a product of voluntary collective bargaining.

The Employer's argument relating to cost may be valid, however, the argument is less persuasive when placed in the context of the negotiations which preceded the 1986-87 agreement. During those negotiations the Employer voluntarily agreed to increase the contribution from 50% to 75% for retirees. The same cost considerations were present then that are present now. Although the Employer argues it was not aware of the interpretation adopted by the Union that the 75% premium payment would apply to increases in a retiree's insurance premium, the Employer had ample opportunity to review the language and propose a change. The language was incorporated into the agreement in 1983. In 1986, the Employer increased the contribution from 50% to 75%, and presumably the Employer knew what that increase represented.

An additional argument is advanced by the Employer that the arbitrator should look to the internal comparables--the agreements the Employer has with other bargaining units--in determining the final offer to be awarded.

Arbitrators, including the undersigned, look to internal comparables when confronting the issue of insurance. Generally, such internal comparables are considered by arbitrators when one of the bargaining units is seeking to change an established pattern. In this case, the evidence establishes that there has not been a common pattern among the internal comparables, and the Union is seeking to retain the status quo regarding insurance; it is not seeking to change an existing pattern.

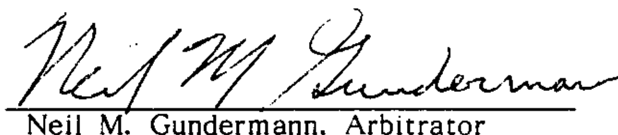
The Employer is seeking a change in the area of insurance and has offered certain inducements to encourage the Union's acceptance of those changes. Some of the improvements in the area of fringe benefits contained in the Employer's final offer were responses to demands made by the Union during the early phases of bargaining. Based on the evidence, the granting of certain of the benefits would result in the Union reaching the average of the comparables. When given the choice of accepting improvements in other fringe benefits in return for a freezing of the insurance premium for retirees, the Union elected to maintain the status quo. Apparently the Union gives high priority to the insurance premiums for retirees.

Based on a review of the statutory criteria, it must be concluded that by maintaining the status quo the Employer maintains comparability with the comparables. This is particularly true of the comparables relied upon by the Union. Even if the comparables urged by the Employer were adopted, at least six other employers provide higher payment of retirees' insurance premiums than does the Employer. After giving due consideration to the statutory criteria, it is the opinion of the undersigned that the Employer has failed to meet its burden of justifying the need for a change from paying the full premium to a dollar premium or for changing from the 75% of the retirees' insurance premium to 75% of the premium in effect at the time of retirement.

It therefore follows from the above facts and discussion thereon that the undersigned renders the following

AWARD

That the Union's final offer along with all previously agreed to items be incorporated into the 1988-89 collective bargaining agreement.



Neil M. Gundermann, Arbitrator

Dated this 24th day
of October, 1988 at
Madison, Wisconsin.