STATE OF WISCONSIN

BEFORE THE ARBITRATOR

****

In The Matter Of The Petition Of

WISCONSIN PROFESSIONAL POLICE ASSOCIATION / LEER DIVISION

For Final And Binding Arbitration
Involving Law Enforcement Personnel
In The Employ Of

DANE COUNTY (SHERIFF'S DEPT.)

Daniel Nielsen, Arbitrator
Date of Award: 02/06/89
MIA-1284/Decision No. 25576-A
Date Of Appointment: 08/09/88
Date of Hearing: 10/19/88

****

Appearances:

Cullen, Weston, Pines & Bach, S.C., Attorneys at Law, 20 North Carroll Street, Madison, WI 53703 by **Mr. Lee Cullen**, appearing on behalf of the Wisconsin Professional Police Association/LEER Division.

Mulcahy & Wherry, S.C., Attorneys at Law, 131 West Wilson Street, Madison, WI 53701-1110, by **Mr. Jon E. Anderson**, appearing on behalf of Dane County.

ARBITRATION AWARD

On August 9, 1988, the undersigned was appointed Arbitrator of a dispute between the Wisconsin Professional Police Association/LEER Division (hereinafter referred to as the Union) and Dane County (hereinafter referred to as the County). A hearing was held on October 19, 1988 at the Dane County Courthouse in Madison, Wisconsin, at which time the parties were given full opportunity to present such testimony, exhibits and other evidence as was relevant. The parties submitted post-hearing briefs, which were exchanged through the undersigned on December 3, 1988, whereupon the record was closed. [1]

Now, having considered the evidence, the arguments of the parties, the statutory criteria set forth in Section 111.77, Stats., and the record as a whole, the undersigned makes the following Arbitration Award.

I. Factual Background

The County is a unit of government providing services to persons living in the county surrounding Madison, Wisconsin. One of the services provided is the operation of a Sheriff's Department. Law enforcement personnel within the department are represented by the Union.

The parties engaged in collective bargaining over a labor agreement for the years 1988 and 1989. The negotiations reached an impasse in December of 1987, and Marshall Gratz of the WERC provided mediation services during the months of January through April, 1988. Final offers were exchanged until July 5, 1988. Through Mr. Gratz's mediation and the exchange process, the issues in dispute were narrowed to the question of what amount each party would pay for insurance premiums during the second year of the contract. Wage increases were agreed to at 2.56% in 1988, and 3.0% in 1989. The parties' final offers were certified on July 6th. The under-signed was thereafter selected as arbitrator, and hearings were held on the dispute.

II. The Final Offers

The parties are agreed that the 1988 contribution of the County to the cost of health insurance will be a maximum of $82.48 per month for single coverage, and $210.00 per employee for family coverage. As noted above, the dispute centers on how any increase in premiums for the second year of the contract will be apportioned.

The Union's final offer is appended hereto as Exhibit "A". In brief, the Union proposes to tie increases in health insurance premiums to the cost of the lowest price plans for single coverage and family coverage offered by the County. The Union would have the County contribute an amount equal to the full cost of the lowest priced plans to whatever insurance the employees elect to carry.

The County's final offer is appended hereto as Exhibit "B". The County would propose to increase its contribution to health insurance premiums by up to $15.00 over the contribution caps contained in the agreement for 1988 ($97.48 for single coverage and $225.00 for family coverage).

III. The Statutory Criteria

This dispute is governed by the provisions of Section 111.77, Wis. Stats., the Municipal Employment Relations Act. The statutory criteria are set forth

below. While each is not discussed to the same extent, each has been fully considered in arriving at the decision on this matter.

"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 employes, 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."

IV. The Arguments Of The Parties

A. The Arguments of the Union

The Union takes the position that external comparables overwhelmingly favor its percentage approach to insurance increases, and should control the outcome of this case. This is a dispute under Section 111.77, and the Union notes that the language of that statute clearly mandates that heavy weight be given law enforcement comparables. The first criterion for comparison is "other employees performing similar services." Significantly, the statute makes no mention of comparisons with other public employees within the

same community, referring only to those in comparable communities. Thus the County's repeated citation of other County contracts in support of its position should be accorded little weight.

Police officers have a unique community of interests that makes comparisons with non-police employees inappropriate. No other set of employees has the range of duties and powers, nor the stress and risk, of a law enforcement employee. Ample arbitral precedent exists for preferring law enforcement comparables in MIA cases over general public employee settlements.

The Union asserts that the City of Madison Police Department is the truest comparable for the Dane County Sheriff's Department. The officers of both departments work out of the same building, and work together on such projects as the Metro Narcotics Unit. They do joint training, and have identical work schedules. Both departments are similar in size, with the City ranking 3rd in the state and the County having the 4th largest department. The 1989 health insurance language in the City's contract with WPPA/LEER is essentially identical to that contained in the final offer of the Union in this case. Thus a comparison with the most comparable law enforcement unit strongly favors the Union offer.

The Union next looks to the largest twenty law enforcement units in the state, and notes that most of these units have, like the City of Madison, adopted percentage contributions which are more consistent with the Union offer than the flat dollar approach proposed by the County. The vast majority of law enforcement officers within the large departments in the state received insurance benefits along the line of those in the Union offer, many at a cost in excess of that paid by Dane County, and this supports selection of that offer.

Turning to non-municipal public employees, the Union points to the State of Wisconsin. The State is far and away the largest employer in Dane County with 40,000 workers. Its work force contains many law enforcement employees, including UW Protection and Security, the Capitol Police, the Madison District state troopers and the prison guards at Oregon. The State's employees receive a contribution of 105% of the lowest priced HMO towards their insurance costs. While this is obviously more generous than the coverage requested by the Union, it is supportive of the Union offer in concept, since it relies on the "percentage of the lowest cost plan" approach underlying the Union's position.

Even consideration of available private sector data supports the Union offer. In Dane County, which is relatively prosperous, private employers such as

Oscar Mayer and CUNA Mutual offer 100% payment of basic plans. In short, all relevant comparability data supports the Union offer as the more reasonable approach to health insurance.

Bargaining history provides further support for the Union position. Until dollar caps were imposed by an arbitrator in 1985, members of this unit received 100% payment of health insurance costs. All other units in the County received only 90% contribution. Thus, contrary to the County's claims, there is ready precedent for different schemes of contribution within the County work force. Further, when the dollar caps were proposed in arbitrations in both 1983 and 1985, the County represented them as unrelated to the benefits structure, and leaving full payment intact. That assertion is no longer true, undercutting the reasoning of the arbitrator who imposed dollar caps, and reducing the precedential value of his Award.

The Union cites the County's own arguments in the 1985 case, wherein it was argued that the State's percentage formula was not at all different from the County's proposed dollar caps, since the State's percentage was figured from a base dollar amount. Further, the County pointed to the State formula as proof of the effectiveness of a contract provision giving employees an incentive to reduce health care costs. The Union plan in this case mirrors the State plan, and the County's reasoning in former arbitrations should now be applied in support of the Union offer.

Bargaining history shows that these employees have long enjoyed a position of leadership on the issue of insurance, surrendering it only upon the adverse ruling of an arbitrator. The voluntarily agreed leadership should not be outweighed in this proceeding by the involuntary imposition of dollar caps in a prior case, since the latter does not represent a status quo arrived at in voluntary collective bargaining.

Consideration of the interests and welfare of the public under criterion "c" should mandate acceptance of the Union offer. Cost containment is, the Union concedes, a legitimate public concern. The Union's use of percentages, pegged to the lowest bidder, provides better cost containment than does the County's arbitrary dollar amount. Flat dollar caps do not provide clear guidance to employees or insurance carriers as to an appropriate course of action in the second year of the contract. Since they are not tied to the cost of any particular insurance plan, they provide no incentive for carriers to moderate their prices. This inadequacy is plainly shown by the fact that insurance rates have increased by 46% in 1988 and 1989, when the dollar caps were in place.

In contrast to a flat dollar cap, the use of 100% of the low bidder sends a strong message to carriers, by rewarding the low cost insurer with a competitive advantage in securing new subscribers. Moreover, the percentage approach provides stability for collective bargaining, since the contributions of both parties are automatically adjusted, without the need to wrangle over new dollar amounts in each succeeding bargain. While the incentive remains, as a built-in factor in the language, the parties have no need to regularly revisit the issue. This has proven to be the case with both the State and the City, the Union notes.

The Union draws the arbitrator's attention to the cost figures showing only a $15,000 cost difference between the offers, and asserts that equity, rather than economics, should be the consideration driving resolution of this case.The Union's final offer is more equitable for a variety of reasons. First, it provides a more gradual increase in shared costs. The 1987 cost sharing for deputies was 0%, continuing a twenty year tradition. In 1988, under the offers of both parties, it will increase to 2.5% of the total health insurance cost. In 1989, under the Union plan, it will stand at 10.5%, or approximately the traditional amount for other County employees. This would apportion the increase in costs about evenly between the employees and the employer. Under the County plan, the cost sharing would amount to 14%, with nearly two-thirds of the increase borne by workers. This rapid increase in employee cost is simply too dramatic to be fair.

A second equitable basis for selection of the Union offer is the fact that the Union offer spreads insurance costs over both single and family plan participants, while the County would fully pay single plan holders, and place the entire increase ion costs on the family plan participants. More deputies will pay towards insurance under the Union plan, but they will pay a smaller amount.

Finally, the Union plan is more equitable since it takes into consideration the already difficult sacrifices made by the deputies in the area of insurance. The deputies have carried their fair share of the load in health care, by accepting lesser benefits, restrictions on their freedom to choose providers, and the introduction of substantial deductibles. The County now seeks to impose the bulk of increased costs on these employees, rather than sharing costs equally.

The Union maintains that a review of the impact that each final offer will have on total compensation for employees is enlightening. Assuming that an employee subscribes to the WPS family plan, the increase in employee insurance costs under the Union offer would reduce the value of the wage

increase for starting deputies to 0.5%, while top Deputy II's will net only 0.9%. The County's proposal would result in a wage decrease for similarly situated starting deputies, reducing net by 2¢ per hour. Top Deputy II's would receive an increase under the County plan of only 4¢ an hour. The County offer amounts to a take back of the entire negotiated wage increase.

Turning to the County's argument that internal comparables should control the outcome, the Union notes important distinctions between these deputies and several of the units relied upon by the County. Beyond the fact that no other unit contains law enforcement employees, and that the settlements with other units were reached before 1989 insurance rates were known, both the Joint Council of Unions and District 1199/W UPQHC received 2.56% across the board in 1988 and 3.0% in 1989. The County, however, reclassified 45 AFSCME represented employees as part of the bargain, increasing the value of the deal by 0.4% in each year. This effective increase of 2.96% and 3.4% is clearly superior to the settlement of wages in the deputies unit, and justifies a somewhat better insurance provision for the deputies. Likewise, the nurses represented by 1199/W received an additional monetary benefit in the form of a new top rate affecting 17 of the 40 nurses in the unit in 1989. The new rate will provide an additional 3% to nearly half of the bargaining unit, again distinguishing the nurses from the deputies.

Internal economic settlements exceed the wage increases in this unit. External settlements among other law enforcement officers also show Dane County's settlement and pay rates to be quite modest. The 2.56% for 1988 in Dane County is the lowest wage increase among the top twenty departments in the state, which averaged 3.6% among counties and 3.9% overall. The top deputy's base in Dane County is 13th among the 16 settled departments for 1988. In 1989, the 3.0% settlement is the second lowest among the seven settled units, which averaged 3.37%. The top deputy's rate for 1989 is sixth out of seven. When compared with City of Madison patrolmen, Dane County has dropped from 75¢ below the top patrol rate in 1979 to $1.31 under the rate in 1989.

Finally, the cost of living, at 4.0% for each year, exceeds the monetary settlement achieved by Dane County Deputies. By any measure, the deputies here are entitled to higher wages. In light of the costs of health insurance coverage, however, these employees have decided to forego higher wages in order to protect their insurance benefit. The arbitrator should recognize this restraint, and award the Union's final offer.

B. The Arguments Of The County

The County initially addresses the question of what appropriate comparables for this unit might be, and concludes that there are three sets. The primary comparables for this unit are other bargaining units within Dane County government. The secondary comparables are other public sector employees within Dane County, while the tertiary comparables are employees of the 14 largest counties in the state, excluding Milwaukee. Unlike the Union, the County does not view Milwaukee County and city police departments (excepting the historically used City of Madison) as having relevance to this case. These are not comparables that the parties have looked to in the past, and the weight of arbitral authority is opposed to mixing city and county comparables. The County urges that the historical comparable groupings be maintained.

The Union must, the County asserts, prove that a substantial need exists for a change from dollar caps to a percentage formula in calculating insurance contributions. The County secured the dollar limits through a series of arbitrations in which it bore the burden of proving by substantial evidence that the caps were reasonable and necessary. The Union should be required to meet the same standard -- an obligation which has not, in the County's view, been fulfilled.

The dollar caps were introduced to this unit in 1985, and were voluntarily continued in the succeeding collective bargaining agreement. The Union has offered no proof that the circumstances giving rise to these limits have changed in any way since that time. Indeed, the County argues, the need for cost containment has increased with a newly developed lack of competition among area physicians. The physicians have, to a level of 98%, affiliated with HMO's in the Madison area. Since they no longer compete on an affiliated - non-affiliated basis for work, physicians are now free to raise prices so long as the HMO's are competitive with one another. This allows across the board increases in rates by physicians. The HMO's are thus the only units with an incentive to hold down costs, and the dollar caps give them clear guidance as to the maximum increase in any given year that will keep them competitive. The use of a percentage, on the other hand, simply allows automatic, and dramatic, cost increases, so long as they are relatively uniform across HMO's. Given the increasing pressure on employers to manage their health care budgets wisely, the County cannot afford to reduce employee incentives to hold down costs.

The County cites numerous arbitration awards for the proposition that an internal pattern of benefits should not be disrupted. Allowing one unit to

improve, through arbitration, a pattern that has been voluntarily accepted by other units is destructive of voluntary collective bargaining. It results in inequities among employees of the same employer and discourages prompt resolution of impasses, since unions will hope to break the pattern set by their brother employees.

While the insurance caps were largely achieved through arbitration, only two of those decisions have been issued in the last three years. All other units have voluntarily continued the caps. Thus a pattern has emerged over time of voluntary acceptance of the dollar caps on insurance. The Union offer seeks to have deputies treated as being different from all other employees in the County's work force, since they alone would have employer contributions based upon percentages, rather than fixed dollar amounts, would have continuation of the percentage after expiration, and would receive more money for insurance than other workers. This is contrary to the long standing tradition of uniform compensation packages across the County work force. Although the Union claims that this uniformity is already lacking in the current year, a close examination of the record shows that this is not true.

The reallocations within the AFSCME unit, cited by the Union as evidence of a more generous settlement with those employees, resulted from a study conducted in 1986 and proposed by the County in that year's negotiations. The issue was pressed, with others, in arbitration before Arbitrator Vernon. His award in favor of the Union left the reallocation issue for this year's bargain. The fact that equity adjustments were made within the existing pay structure in no way weakens the uniform pattern of 2.56% a.t.b. in 1988 and 3.0% a.t.b. in 1989.

Similarly, the fact that an additional step was added to the psychiatric nurses' pay schedule cannot be used to undermine the pattern of settlements. The additional step did result in many unit members receiving actual pay increases above the 3.0% in 1989, but this was in response to the widespread shortage of nurses. Further, a quid pro quo was received by the County, in the form of a right to hire above the initial step. Neither party costed the additional step as part of the package, and, in any event, it only affected 17 employees in the entire Dane County work force.

The Union provides no reason for exempting its members from the uniform pattern of dollar caps within County employment. Other units have ratified their 1988-89 contracts with full knowledge of the insurance rate increase for 1989. The Insurance Advisory Committee, dominated by representatives of the County's unions, including the law enforcement unit, has not proposed

any modification of benefits to reduce the amount of increase. In short, there is no plausible reason for believing that voluntary bargaining would not have resulted in adoption of the County's position had those efforts been successful.

The County points to the fact that all other area public employers require uniformity of benefits among their employees, and that arbitrators dealing with the question in area municipalities have stressed the importance of maintaining that uniformity. For reasons previously mentioned, uniformity is essential to the maintenance of good labor relations. It is the internal consistency, rather than the particular method used for computing contributions, which is important in looking to other area employers.

The County avers that these deputies enjoy a very generous level of overall compensation in comparison with other counties' law enforcement personnel. Although the Union attempts to make a case for the proposition that Dan County deputies are underpaid, the Union ignores the very generous educational incentive pay (EIP) and longevity provisions in the contract. When these payments, which increase in relationship to the base pay, are factored in, Dane County deputies rank first among their colleagues, ranging from 20.5% to 22.2% above the average in hourly compensation. These wage add-ons, which are premier contract provisions within the comparables, make it extremely unlikely that the pay decrease alleged by the Union could in fact affect any unit members if the County offer is chosen. Even if the County offer did result in an employee insurance cost which negated the negotiated pay increase, the employee would have the option of switching to a lower cost plan.

These deputies have, the County argues, received pay increases that, by any measure, greatly exceed the rate of inflation. In claiming that they deserve special consideration because the insurance proposal of the County might erode their bargained pay increase, the Union takes no account of the already generous level of pay received, nor the fact that many lower paid Dane County employees have already agreed to the County proposal. There is simply no reason, the County asserts, to grant preferential treatment to deputies.

For all of the foregoing reasons, the County urges that its offer be deemed the more reasonable, and be accepted by the arbitrator.

V. Discussion

Each party to this dispute concedes what is obvious from the record. The internal pattern of settlements uniformly favors the County's position, while external comparables more strongly support the Union's final offer. The initial question is then whether the comparable groupings should be equally weighted, or one given preference over the other.

A. Comparability

In considering what the parties might have agreed to had negotiations been successfully concluded, arbitrators are directed by both statute and common sense to review the judgement of similarly situated negotiators in comparable units. The range of units considered will be dictated first by the statute, next by bargaining history, and finally by factors such as size, proximity, similarity of economic conditions, and other evidence tending to show that a similarity in circumstances between the two sets of negotiations. Consideration of these factors may lead to different results, depending upon the issues in dispute.

The language of the statute is considered first because it provides the basis for the arbitrator's jurisdiction. In this case, the Union alleges that internal settlement patterns may be discounted because Section 111.77(6), unlike Section 111.70(4)(cm)7, makes no reference to comparisons with public employees within the same community.[2] This language has remained in the statute since the early days of the law, notwithstanding the fact that arbitrators have generally considered internal settlement patterns in law enforcement and fire fighter cases. A construction of the statute that permits -- indeed requires -- an arbitrator to consider non-law enforcement settlements in comparable communities, but bars consideration of the agreements reached by employees within the same unit of government that is a party to the dispute is absurd. Were the principle advanced by the Union accepted, the undersigned would be obligated to discard evidence concerning the City of Madison Police Department, the State of Wisconsin law enforcement employees, and the private sector companies cited by the Union, since all are located within the same community as the Dane County Sheriff's Department, rather than in comparable communities. Neither the parties to this dispute nor the state legislature can be presumed to have intended such a novel result. The undersigned concludes that consideration of settlements within the confines of Dane County, including among the bargaining units of the County itself, is statutorily permitted.

The next most persuasive basis for comparability is that set of negotiations that the parties generally rely upon in voluntary bargaining. Since the function of an interest arbitrator is to reflect, as nearly as possible, the outcome that the parties would have realized in negotiations, it only makes sense to be guided by the same benchmarks that the negotiators have traditionally employed. In this case, both parties concede the historical standing of the City of Madison Police Department, as well as certain of the larger counties and, at least for bargaining over insurance issues, the State of Wisconsin. Looking to prior arbitrations between these parties, it appears that the parties have been somewhat flexible in their choice of which comparable groupings might be appropriate beyond those cited, and that neither of the most recent arbitrators has definitely addressed the issue of what might be the most appropriate overall grouping for this unit. The County has consistently maintained that the other bargaining units of Dane County are comparable, and it appears that prior arbitrators have accepted that proposition for the insurance issue, although with mixed outcomes. Milwaukee has been cited at various times by both parties, as have the underlying municipalities of Dane County. The latter, with the exception of Madison, are not cited by either party in this case. The county seats urged as comparables by the Union do not appear to have been previously argued in interest arbitration.

In applying both bargaining history and the general similarity criteria noted above,[3] the undersigned concludes that the appropriate comparables for this arbitration are:

(1) Internal comparables, consisting of the other bargaining units of Dane County;
(2) External comparables, consisting of:
    a. The City of Madison Police Department
    b. Sheriff's departments in the ten most populous counties in Wisconsin excluding Milwaukee
    c. The State of Wisconsin
    d. Other public employees generally within the confines of Dane County
(3) Private sector comparables

As noted, the use of internal comparables is a standard device in interest arbitration, and has been accepted in past awards involving this unit. Both parties rely to an extent on both the City of Madison and other county sheriff's departments. The limitation to the ten most populous counties, excluding Milwaukee, allows for consideration of all Wisconsin counties above 100,00 population, without the distortion of a county having nearly

three times the population of Dane County, very different political and economic constraints, and a multitude of special legislative provisions crafted specifically to address its problems.

The exclusion of county seats springs from the lack of any evidence that these parties have ever relied upon these cities as comparables, and the general distinctions between the structure and operation of city police forces and county sheriff's departments, and their underlying municipal governments.

The State of Wisconsin is considered a comparable because of the unique status it occupies as the largest employer in Dane County. Though state employees bargain under a radically different law which would usually distinguish them from municipal employees, their sheer numbers in Dane County and their concommittant impact on the insurance market dictates that the provisions of their contract be considered.

Reference to other public employees generally within Dane County is dictated by the language of the statute, and the fact that there are some comparisons that can be made across occupational lines, particularly when purely economic issues are considered.

Private sector comparables are included as a matter of statutory mandate, and because reliable evidence of private sector patterns can provide useful guidance to what settlements in general have been in a given area.

As stated at the outset, the comparables are rather starkly divided, with the internal pattern on insurance mirroring the County's offer, and the bulk of the external comparables favoring the Union offer. The relative weight assigned to each comparable grouping will therefore be of great significance to the outcome. In deciding that the internal pattern of settlements has greater import than the prevailing conditions in external units, the undersigned is primarily influenced by the nature of the contract issue.

The general rule is that an internal pattern of settlements on economic issues should not be upset by an arbitrator.[4] The exceptions to this would an instance where the level of compensation for a particular class of employees has fallen or risen to a level where it is completely out of sync with the labor market for that type of employee, as shown by external comparables, or where the bargaining unit at issue so dominates internal negotiations that forcing it to comply with the internal pattern would amount to the proverbial "tail wagging the dog." Neither applies in this case. Overall compensation in this unit, including the amount of insurance contribution by

the employer under the County offer, compares favorably with that received by other deputy sheriffs in other large counties. On the second point, this unit is certainly a significant force in bargaining with the county, but it has occupied a leadership position on the issue of insurance only in the years prior to 1985, when it was defending the status quo system of full payment. Approximately 90% of the County's work force lies outside of the deputies unit. It is not, therefore, unrealistic to expect that these employees would share the burdens and gains of other bargaining units that settled earlier than they did.

The policy favoring adherence to established internal patterns of settlement is rooted in declared public policy of encouraging "voluntary settlement through the procedures of collective bargaining."[5] Failure to honor an existing pattern will undercut voluntary collective bargaining, since it tells other units that they should have taken their chances in arbitration, rather than settling on terms that, while less than ideal, were consistent with other internal settlements. Moreover, the use of arbitration to secure superior benefits or conditions of employment will inevitably have an adverse effect on the morale of other workers. Placing aside considerations of how an inconsistent result in this case might affect other workers, the internal pattern should be favored since it is more likely to realistically reflect the outcome of successful negotiations. In most cases, an employer which has adopted a firm position in favor of uniformity will not abandon that position for the sake of settlement with one hold-out unit.

This case is distinct from the situation in 1983, where Arbitrator Petrie was upholding a pre-existing distinction in benefits between this unit and others. It is now the Union which seeks to break from the status quo. As with any party seeking to alter the status quo, the Union bears the burden of justifying the change. When combined with a supporting internal pattern, the burden of upsetting the status quo becomes very difficult to meet.

In the area of insurance benefits, a uniform internal pattern is particularly persuasive. Internal consistency of general benefits is a legitimate goal of most employers, and is generally supported by arbitrators. While wages will generally vary from occupation to occupation, depending upon market conditions for workers' skills, the level of insurance benefits across a work force is far less likely to be skill-specific and far more likely to be standardized as to elements such as plans offered, deductibles, and degree of contribution. Unless the benefit is demonstrably substandard, and not made up for in some other component of the compensation package, external comparables will not generally have great weight in disputes over the features of an insurance plan.

As is clear from the foregoing discussion, the internal comparables have much more significance in this case than external comparables. The Union, however, questions the actual existence of a persuasive internal pattern, pointing to elements of the wage package in both the 1199/W and AFSCME settlements that add to the value of those agreements. The undersigned does not agree that the distinctions noted break the pattern.

The 1199/W settlement was aimed at retaining current staff, and attracting new staff, in the face of a nursing shortage. To this end, an additional top step was added in 1989 to the benefit of approximately 40% of the unit. This additional step enhances the career earnings of County nurses. The evident purpose of this expansion in the wage schedule was to deal with a labor shortage for a particular occupation. It does not appear to have been a means of compensating nurses for the continuation of the dollar caps on insurance. The Union has been unable to show any comparable shortage of law enforcement personnel requiring special measures in this unit.

In the case of the Joint Council of Unions, the County reallocated Income Maintenance Workers upwards. These reclassifications involved some 40 to 45 of the 729 workers represented by the Joint Council, and added 0.4% to the value fo the 1988 package. The County had proposed these reclassification in prior negotiations with the Joint Council, taking the issue to arbitration in the contract talks over the predecessor agreement. The County's loss in that case deferred the issue to the 1988-89 negotiations. The unrebutted testimony at the hearing in this case placed the reasons for the reclassifications as increased responsibilities, and a need for equity adjustments on these rates to reflect the pay received by other employees having the same level of responsibility. This applies as well to the other five reclassified positions. Again, there is no evidence that this additional money was a quid pro quo for the insurance caps that the Joint Council agreed to in 1988.[6]

Disparate treatment assumes nearly identical circumstances. Every set of negotiations will have issues that are specific to a particular unit, and the settlements will never be perfectly uniform.[7] In the tentative agreements between the County and LEER, attendance at WPPA conventions and the probationary period for Deputy III's are addressed. Certainly this would distinguish their bargain from others, but it would not constitute a break in the pattern. The wage issues identified in the 1199/W and AFSCME settlements, while more economically significant, appear to be aimed at issues specific to those units, unrelated in purpose to either the across the board increases or the insurance caps.

In addition to the claimed distinctions in wage packages, the Union asserts that other units were unaware of the dramatic increase in insurance premiums for 1989 before they settled their 1988-89 contracts with dollar caps. The record is rather unclear on this point, with the County asserting that ratification in at least one unit occurred after the rate became generally known, but the undersigned concludes that the tentative agreements themselves were reached without knowledge of the 1989 insurance rates. Two points can be offered in response to this . First, the final offers in this dispute were submitted before the 1989 rates were known, so the difference in the position of this Union and that adopted by all other county unions is not explained by foreknowledge of the 1989 rates. Second, any time a cost-sharing scheme, such as dollar caps or a percentage, is incorporated into a collective bargaining agreement, the parties must reasonably anticipate that it will have an impact on the distribution of costs and that increases will impact both parties. The fact that insurance costs were again rising could not have been unknown to the negotiators representing the other Unions when they agreed to the dollar caps. Certainly the amount of the increase was still in question, but some potential increase in employee costs must have been in the contemplation of the parties. Where a particular result is inevitable from agreed upon language, it cannot be said to have been beyond the contemplation of the parties. The proposition underlying the Union's argument is that the other unions would never have agreed to continue the dollar caps had they been aware of the rate of increase. This is not out of the realm of possibility, but nontheless remains speculation. The accomplished fact is that the dollar caps and the 1989 increase are in place for all other County employees.

The undersigned concludes that there is no basis for concluding that a uniform pattern of settlements has not been established across the County's bargaining units mirroring the position of the County in this arbitration. This pattern establishes a strong presumption in favor of the County's final offer, since internal comparables are more persuasive in this dispute than external comparables.

B. The Interests and Welfare of the Public

The Union asserts that its offer best serves the interests of the public by more effectively containing health care costs than the dollar caps proposed by the County. Countering this suggestion is the County's evidence tending to show that provider costs have risen dramatically even in the presence of HMO's, as a result of the near extinction of non-affiliated physicians competing with the HMO affiliated providers.

Both positions are speculative. The use of percentage based contributions by the State and the City has not prevented the current wave of price increases, anymore than the presence of dollar caps in the County contracts has shielded them from dramatic increases. Both offers are premised upon the same assumption -- that limiting the employer contribution will encourage the HMO's to submit low bids, in an effort to minimize employee costs and secure more subscribers. Under the Union's proposal, the competition is directly among HMO's, since the contribution is defined in terms of the lowest bid. In the County's scheme, the competition is to match most closely a fixed dollar amount. Assuming that the HMO's are engaged in true price competition, either offer would encourage low bids. To the extent that the purpose of either offer is to foster competition and price stability among carriers, the offer of the Union is preferable. The County's offer insures that at least some yearly increase in premium will be fully paid by the employer, while the Union offer holds out the possibility of carriers being placed at a competitive disadvantage by even a small increase, depending upon the actions of other providers. While both offers are designed to serve the broad public interest in containing health care costs, the Union offer has the potential of more effectively achieving that goal. Thus consideration of the interests of the public favors the Union offer somewhat more strongly than the County offer.

C. Other Traditional Factors

The Union raises two "traditional factors" in favor of its offer. Bargaining history shows that this unit has traditionally enjoyed insurance contributions based upon a percentage of the premium. The 100% contribution was lost in arbitration, wherein the County argued that the imposition of dollar caps would not result in any employee contribution. The caps were continued voluntarily in one contract thereafter, because the dollar amounts were known to be sufficient to cover the increased costs. The Union's argument is that the fact that the status quo was created by an arbitrator rather than by agreement, and was secured in part by the County's representation that full payment would continue should justify the removal of the caps in another arbitration in a changed climate.

As noted above, dollar caps are a method of cost-sharing. They cause employees to migrate to the lowest cost plan and will theoretically provide an incentive for price competition among carriers. Absent at least the possibility of some pass-along to employees, they serve little purpose. While the County's position in the 1985 arbitration was buttressed by the absence of any immediate cost impact on employees, the arbitrator expressly

considered the cost-sharing aspects of the caps. His assumptions concerning the likelihood of large increases seem somewhat rosy in retrospect, but his Award was plainly not premised solely, or even primarily, on the assertion that employees would not be affected by the caps. Instead, he directly responded to what he viewed as "a problem of alarming proportions" by adopting the County's proposal. While certain of the assumptions made by the arbitrator in 1985 are invalid, it cannot be said that his overall reasoning has been undercut by subsequent events.

The second of the "traditional factors" raised by the Union is simply that of equity. In the abstract, the undersigned agrees that the sharing of increases under the Union offer is more equitable, since it more nearly splits the increases on an equal basis between employees and the County. Equity in bargaining is not, however, merely an abstraction. Balanced against the Union's equitable considerations is the fact that selection of the Union offer would award these deputies an insurance benefit denied to all other County employees. The fairness of a particular result is a matter of context. Standing alone, this unit might fairly be given the health insurance provision it seeks. As part of an overall work force of 1576, the granting of a preference to these 175 employees would be unfair to the remaining 1400 employees, many of them lower paid, who will be subject to the dollar caps proposed in the County offer. Considerations of equity favor the County's offer, simply because it does not result in unjustified distinctions between employee groups.

D. Conclusion[8]

Each party has made the case it needed to make in order to prevail in this arbitration, and the result turns largely on the adoption of the internal comparables as the primary guides to a reasonable settlement. The Union might well be frustrated at its inability to separate itself from the remainder of the work force on the issue of insurance premiums, but strong arbitral precedent, considerations of labor relations policy, and internal equity dictate a presumption in favor of consistency across bargaining units. The distinctions noted by the Union do not overcome this presumption. The comparability criterion favors adoption of the County offer.

The interests of the public are served by both offers, since both seek to contain health care costs. The Union offer better meets this goal, and is preferred under criterion "c".

Equity is a factor normally considered in bargaining. Equity favors adoption of the County offer, since it does not draw distinctions within the County

work force where there appear to be no bases for distinction. Criterion "h" favors the offer of the County.

The damage done to labor relations within the County by breaking the internal pattern of settlements on insurance outweighs the marginally greater public interest in the Union's offer. Under the statutory criteria, the final offer of the County is more reasonable.

VI. AWARD

On the basis of the foregoing, and the record as a whole, and after full consideration of the statutory criteria, the undersigned directs that the Final Offer of Dane County, along with the provisions of the prior agreement as modified by the stipulations reached in bargaining, be incorporated into the 1988-89 collective bargaining agreement between the parties.

Dated this 6th day of February, 1989 at Racine, Wisconsin:

Daniel Nielsen, Arbitrator

---

[1] The parties graciously granted a brief extension for the issuance of this Award.

[2] Section 111.70 (4)(cm)7 provides, at subsection "e", that arbitrators should consider: "Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities." (Emphasis added).

[3] This conclusion is based upon the available evidence in this case concerning bargaining history and the units relied upon in prior arbitrations.

[4] This is not a case where the issue is peculiar to the type of employees involved, such as work schedules for deputies, payment of bar dues for attorneys, or beeper pay for social workers. In those cases, it might well be appropriate to give great weight to settlements involving employees performing similar duties in other municipalities, since the issue is unlikely to present itself within other units in the employer's work force. Even in those cases, a consideration of the economic impact on the overall package vis-a-vis other bargaining units would be appropriate.

[5] Section 111.70(6), MERA: DECLARATION OF POLICY. The public policy of the state as to labor disputes arising in municipal employment is to encourage voluntary settlement through the procedures of collective bargaining. ..."

[6] As a practical matter, the undersigned is somewhat skeptical of the implicit proposition that the remaining 94% of the workers represented by the Joint Council of Unions would have their insurance benefits substantially affected in return for a reallocation of 6% of the unit.

[7] See, for example, City of Marshfield, Dec. No. 25298-B (12/31/88) at pps. 16-17 for a discussion of distinctions between monetary benefits in costing wage settlements.

[8] The undersigned has not expressly discussed the total compensation question, nor the arguments relating to the cost of living, since these were made in connection with the Union's attempt to use external law enforcement units as the primary comparables. Neither factor serves to distinguish the deputies from other employees of the County to a degree sufficient to rebut the presumption in favor of using internal comparables for the resolution of this issue. The cost of living is the same for all employees of the County. The impact of the insurance dollar caps will be felt in all units, some more severely than in the deputies unit.

WISCONSIN PROFESSIONAL POLICE ASSOCIATION/
LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION
REVISED FINAL OFFER

June 28, 1988

The Revised Final Offer of the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division for a collective bargaining agreement between Dane County and the Law Enforcement Employee Relations Division of the Wisconsin Professional Police Association for and on behalf of the Dane County Law Enforcement Officers' Association succeeding the 1985-87 agreement between said parties is as follows:

1. All terms and conditions of the 1985-87 agreement shall be continued except as otherwise agreed between the parties in their stipulations and except as noted below:

   a. Health Insurance. Revise Section 13.01(a) to read as follows:

      (a) A group hospital, surgical, major medical and dental plan as agreed to by the parties shall be available to employees. In the event the Employer shall propose a change in this plan, this Contract shall be reopened for purposes of negotiations on such a proposed change. Effective December 20, 1987, for group health insurance the Employer shall pay up to eighty two dollars and forty eight cents ($82.48) per month for employees desiring the "single plan" and up to two hundred ten dollars ($210.00) per month for employees desiring the "family plan" and up to two hundred ten dollars ($210.00) for spouse credit family plan. Employees with a spouse on Medicare Plus will receive a payment not to exceed that paid by the Employer for family coverage. Effective December 17, 1988 these amounts shall be increased, if necessary, so that they cover 100% of the lowest cost single plan and 100% of the lowest cost family plan offered by the Employer. For group dental insurance the Employer shall pay up to fourteen dollars and seven cents ($14.07) per month for employees desiring the "single Plan," up to thirty seven dollars and eighty three cents ($37.83) per month for those desiring the "family plan" and thirty seven dollars and eighty three cents ($37.83) for spouse credit family plan. For dental insurance during the term of this agreement, the Employer shall pay up to $5.00 per month above the current contribution cap(s) for the "family plan" and "single plan"

referred to in Section 13.01(a). The Employer agrees that employees and their dependents may elect to become members of any health plan made available and approved by the Employer. There shall, however, be only one (1) thirty (30) day enrollment period per year during which time employees may change plans. The Employer agrees to pay costs for employees and dependents choosing other plans equal to the dollar amounts stated above. Employer further agrees to continue to provide such coverage for each employee retired because of age and their eligible dependents until that retired employee reaches the age of 65 years or dies, but provided that the retired employee shall be required to pay all amounts of said premiums in excess of $51.84 per month for family coverage and $18.03 per month for single coverage to the employer prior to the 10th day of the month preceding the month of coverage. Failure to make timely payments by a retired employee to the Employer shall be grounds for termination of coverage of that retired employee and their dependents.

Lee Cullen
On behalf of the Wisconsin
Professional Police
Association/Law Enforcement
Employee Relations Division

DANE COUNTY FINAL OFFER

July 6, 1988

The Final Offer of Dane County for a collective bargaining agreement between Dane County and the Law Enforcement Employee Relations Division of the Wisconsin Professional Police Association for and on behalf of the Dane County Law Enforcement Officers' Association succeeding the 1985-87 agreement between said parties is as follows:

1. All terms and conditions of the 1985-87 agreement shall be continued except as otherwise agreed between the parties in their stipulations and except as noted below:

a. Health Insurance. Revise Section 13.01(a) to read as follows:

(a) A group hospital, surgical, major medical and dental plan as agreed to by the parties shall be available to employes. In the event the Employer shall propose a change in this plan, this Contract shall be reopened for purposes of negotiations on such a proposed change. For group health insurance the Employer shall pay up to eighty two dollars and forty eight cents ($82.48) per month for employes desiring the "single plan" and up to two hundred ten dollars ($210.00) per month for employes desiring the "family plan" and up to two hundred ten dollars ($210.00) for spouse credit family plan. Employes with a spouse on Medicare Plus will receive a payment not to exceed that paid by the Employer for family coverage. For group dental insurance the Employer shall pay up to fourteen dollars and seven cents ($14.07) per month for employes desiring the "single Plan", up to thirty seven dollars and eighty three cents ($37.83) per month for those desiring the "family plan" and thirty seven dollars and eighty three cents ($37.83) for spouse credit family plan. For health insurance during the term of this agreement, the Employer shall pay up to $15.00 per month above the current contribution cap(s) for the "family plan" and "single plan" referred to in Section 13.01(a) above. For dental insurance during the term of this agreement, the Employer shall pay up to $5.00 per month above the current contribution cap(s) for the

"family plan" and "single plan" referred to in Section 13.01(a). The Employer agrees that employes and their dependents may elect to become members of any health plan made available and approved by the Employer. There shall, however, be only one (1) thirty (30) day enrollment period per year during which time employes may change plans. The Employer agrees to pay costs for employes and dependents choosing other plans equal to the dollar amounts stated above. Employer further agrees to continue to provide such coverage for each employe retired because of age and their eligible dependents until that retired employe reaches the age of 65 years or dies, but provided that the retired employe shall be required to pay all amounts of said premiums in excess of $51.84 per month for family coverage and $18.03 per month for single coverage to the Employer prior to the 10th day of the month preceding the month of coverage. Failure to make timely payments by a retired employe to the Employer shall be grounds for termination of coverage of that retired employe and their dependents.

Jon E. Anderson, Esq.
On Behalf Of Dane County