STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of:

SHOREWOOD PROFESSIONAL FIREFIGHTERS, LOCAL 808, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,

CASE 38

No. 42724 MIA-1446
Decision No. 26625-A

For Final and Binding Arbitration Involving Fire Fighting Personnel in the Employ of

VILLAGE OF SHOREWOOD, WISCONSIN

Appearances:

Lawton & Cates, S.C., Attorneys at Law, by Mr. Richard V. Graylow, appearing on behalf of the Association.

Davis & Kuelthau, S.C., Attorneys at Law, by Mr. Roger W. Walsh and Ms. Jane M. Knasinski, appearing on behalf of the Employer.

ARBITRATION AWARD:

On November 17, 1990, the Wisconsin Employment Relations Commission appointed the undersigned Arbitrator pursuant to Section 111.77 (4)(b) of the Municipal Employment Relations Act, to issue a final and binding award to resolve an impasse arising in collective bargaining between Shorewood Professional Firefighters, Local 808, International Association of Firefighters, referred to herein as the Association, and Village of Shorewood, referred to herein as the Employer or Village, with respect to the issues specified below. The proceedings were conducted pursuant to the provisions of Wis. Stats. 111.77 (4)(b) which limits the authority of the Arbitrator to the selection of the final offer of one party without modification. The

proceedings were conducted at Shorewood, Wisconsin, on January 18, 1991, at which time the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. The proceedings were transcribed and briefs and reply briefs were filed in the matter. Final briefs were received by the Arbitrator on May 7, 1991.

THE ISSUES:

The issues in dispute between the parties include the timing of the proposed wage increases; the Employer proposal that the parity with police clause be rendered inoperative for the term of the 1989-1990 Agreement; the Employer proposal to modify the health insurance coverages; and the Employer proposal to include the words "straight time" in the holiday pay provisions of the Agreement. The specifics of the proposals will be discussed in the following sections of this award.

DISCUSSION:

Wis. Stats. 111.77 (6) sets forth the factors to which the Arbitrator shall give weight in determining which party's final offer should be adopted. The factors are:

> (6) In reaching a decision the arbitrator shall give weight to the following factors:
> (a) The lawful authority of the employer.
> (b) Stipulation 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 employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes 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.

The Arbitrator will consider the record evidence and the parties' arguments in light of the statutory criteria found at 111.77 (6)(a) thru (h) as set forth above.

THE PARITY ISSUE:

As noted in the preceding section of this award, the dispute involves the timing of the wage increases, health insurance, and holiday pay. Both parties in support of their respective positions rely on the historical parity relationship between firefighters and police officers in the Village of Shorewood. The parity issue requires the undersigned to consider several approaches. There is the consideration of the parity of wage rates of the firefighters compared to wage rates of police officers. There is the consideration of the parity of earnings over the life of the contract for firefighters compared to the earnings of police officers over the same period of time. There is also the consideration of "package parity" which considers the total compensation comparisons between firefighters and police. The undersigned will consider each of the three types of parity described above.

Turning first to a consideration of wage rate parity, the evidence establishes that at the end of the contract period the

wage rate parity between police and firefighters will have been maintained. What is at issue here is the timing of the wage increases. All of the wage increases proposed by the Employer and the Union are the same as those negotiated for police employees. The Firefighters Association, however, proposes that the timing of the wage increases be the same in this bargaining unit as the dates on which the wage increases were implemented in the police unit. Thus, the firefighters propose an increase of 3.625% on January 1, 1989, an increase of .75% on July 1, 1989, an increase of 3.25% on January 1, 1990, and an increase of 1.50% on July 1, 1990. The Employer proposes the same four increases at the same percentages, but with the following implementation dates: January 1, 1989, December 31, 1989, February 1, 1990, and July 1, 1990.

From the foregoing dates of implementation, it is clear that wage rate parity between police and fire exists with the initial increase and with the increase both parties propose on July 1, 1990. It is also clear that during the period from July 1, 1989, to February 1, 1990, the wage rate parities between police and fire do not exist except for one day on December 31, 1989. Thus, parity exists for the first six months of the duration of the contract and for the last eleven months. Based on the history of the parity relationships between police and fire, the Association's offer is preferred because the parity relationship is destroyed for a period of seven months.

We now turn to a consideration of earnings parity. It is obvious from the timing of the wage increases that the firefighters' final offer will generate more straight time

earnings for police than firefighters. The evidence satisfies the undersigned that for the term of the 1989-1990 collective bargaining agreement firefighters at the top rate would receive $204.42 less in straight time wages than police officers at the top rate for the same time period because of the difference in dates of implementation of the wage increases. Thus, the earnings parity comparisons reflect the disparity in the timing of the wage increases which destroys the parity relationships for a period of seven months as discussed supra. The disparity in parity for earnings over the term of the agreement is unpersuasive to this Arbitrator because earnings parity is also subject to variations based on amounts of overtime worked by individual firefighters and individual police officers. Furthermore, the evidence establishes that there is a distinction in the amount of holiday pay paid to police officers and firefighters where firefighters received significantly higher holiday pay than do employees in the police unit. The holiday pay issue will be discussed at more length later in this award. From all of the foregoing the undersigned concludes that the disparity in straight time earnings parity relationships is not a persuasive consideration.

Finally, the undersigned considers "package parity". The criteria set forth in 111.77 which directs the Arbitrator to consider over-all compensation presently received by employees including direct wage compensation, vacation, holidays, excused time, insurance and pensions, medical and hospitalization benefits . . . . These over-all compensation items set forth in the statute constitute what is referred to supra as "package parity".

From the directives of the statute, then, the Arbitrator must necessarily consider "package parity" in evaluating the parity relationships. The evidence establishes that the police unit agreed to modify its hospitalization coverages so as to increase the deductibles and the co-insurance to be paid by the employee. During the pendency of these proceedings, the Association maintained the level of coverages at the old deductible levels without co-insurance. Employer Exhibit 5e establishes that during the period from September 1, 1989, to April 1, 1990, the additional cost to the Employer for the higher coverage levels provided to firefighters calculated to $5,113.26. Employer Exhibit 5f establishes that the delayed increase from July 1 to December 31 of .75% established a reduced cost of $2,776.34 for the eighteen employees in the unit as a result of the deferral of that increase for six months beyond the timing of the increase in the police unit. The evidence establishes that the deferral of the 3.25% wage increase from January 1, 1990, to February 1, 1990, results in a cost savings to the Employer of $2,025.21. Thus, the total cost savings to the Employer of the deferral of wage increases calculates to $4,801.55 compared to the cost of implementing the wage increases at an earlier date in the police unit. From the foregoing it is seen that cost savings of the deferral are approximately $300 less than the amounts of excess premiums paid for health insurance to firefighters which were not paid in the police unit. From the foregoing it is concluded that when considering "package parity" the Employer offer is justified.

The Arbitrator has concluded that wage rate parity

comparisons between police and fire favor the Association offer: that earnings parity is unpersuasive: and that "package parity" favors the Employer offer. Because the statute specifically directs that the Arbitrator consider total compensation which is akin to "package parity", the undersigned concludes that it is the "package parity" which should control and it follows therefrom that in making the parity comparisons the Employer offer is preferred.

In order to achieve the deferred wage increases, the Employer proposed that the provisions of the predecessor collective bargaining agreement found at Section 1 be modified adding the following statement to the last paragraph of the section:

> "This paragraph shall be inoperative during the term of the 1989-1990 contract or any extension thereof."

Thus, the Employer seeks to suspend the provisions of Section 1 which states that the salary schedule established under the contract will maintain the same pay structure with comparable positions in the police department bargaining unit. Section 1 then enumerates the comparable positions in the two units. The undersigned has found that "package parity" considerations favor the adoption of the Employer offer. If the Employer offer is to be adopted, there will be periods of time during the term of the agreement being arbitrated where the comparable positions between police and fire bargaining units will not be paid at the same salary schedule. Thus, it is necessary to suspend the provisions of Section 1 of the agreement for at least those portions of time where the salary schedules are not identical between police and fire. Consequently, the undersigned concludes that the suspension

is necessary if "package parity" is to be maintained.

The Union opposes the inclusion of the proposal of the Employer dealing with making the last paragraph of Section 1 inoperative during the term of the 1989-1990 agreement, arguing that the suspension impacts other sections of the agreement at Section 6 Overtime, Section 13 Unused Sick Leave Retirement Benefits, Section 23 Educational Benefits. The undersigned is not persuaded by this Union argument. The impact on other sections of the agreement are minimal because the wage rate differentials in the agreement are for a period of only seven months, commencing on July 1, 1989, and ending as of February 1, 1990. Thus, the impact of the differential as it relates to the other clauses in the agreement are minimal. The Union also argues that the impact on other provisions negates benefits in different sections of the agreement which the Union fought long and hard to secure. That argument is also unpersuasive. This is so because effective February 1, 1990, and thereafter the wage structures between police and fire remain the same and whatever minor impact the disparity in wages has on other provisions of the agreement are restored as of that time.

From all of the foregoing the undersigned concludes that the wage offer of the Employer is preferred. The undersigned in reaching that conclusions has reviewed all of the evidence which compares the wage offer and wage structures of the parties' proposals here with the wages paid in comparable communities in the northeast suburban Milwaukee area. The Arbitrator finds it unnecessary to comment with respect to those comparisons because

both parties' wage offers result in the same levels of pay for the majority of time covered by the collective bargaining agreement. Thus, no matter which party's offer is adopted, the wage relationships paid to firefighters in this unit compared to the wages paid to firefighters in other northeastern Milwaukee area suburban communities remain constant.

THE HEALTH INSURANCE ISSUE:

The record is undisputed that the health insurance proposal of the Employer reflects the same coverages that the police bargaining unit and the Department of Public Works bargaining unit have agreed to. The record also establishes that the health insurance proposal of the Employer would establish the same level of benefits for firefighters as the benefits provided to unrepresented employees. Thus, the internal comparables support the adoption of the Employer offer with respect to health insurance benefits. Arbitral authority has consistently held that internal comparisons with respect to fringe benefits such as health insurance should be given primary consideration. The undersigned has agreed with that opinion in prior arbitration awards and finds nothing in this record to persuade him to depart from arbitral authority as it relates to this matter.

Not only do the internal comparisons support the Employer offer with respect to health insurance, but the external comparables also support the Employer offer. The parties agree that the external comparables consist of Brown Deer, Fox Point, Glendale and Whitefish Bay. Village Exhibit 26 establishes that Brown Deer provides $200 and $600 deductible and 80/20% co-

insurance. Fox Point and Glendale have a $150 and $300 deductible and an 80/20% co-insurance. Whitefish Bay provides a $100/$200 deductible and no co-insurance. The Employer proposal here establishes a maximum Employee cost of $700 single and $1,400 family compared to no maximum cost limitation in Brown Deer and a maximum of $1,300 single and $2,600 family in Fox Point and Glendale. Whitefish Bay maximum cost to the employee in their plan is $100 for single and $200 for family. From the foregoing it is seen that Employer proposed coverage in health insurance as it relates to deductibles, co-insurance and maximum cost to employees is similar to three of the four comparable communities. Only Whitefish Bay has lower deductibles and no co-insurance benefits and lower maximum cost to the employee. The undersigned concludes from the foregoing data that the external comparables support the Employer offer.

The Union argues that there is no quid pro quo provided to the firefighters for the establishment of the higher deductibles and co-insurance offered by the Employer. The Employer argues that the wage offer is the quid pro quo. The Union contends that there was a quid pro quo provided in both DPW units and in the police unit for the adoption of the higher deductibles and the co-insurance. The undersigned has reviewed all of the evidence including Union Exhibits 129 and 130. Union Exhibit 129 is a To Whom It May Concern statement from Scott Bell, a union steward in the DPW union wherein he summarizes as follows:

> "In essence the Village told us that if we wanted 50% paid health insurance for retirees, we would have to accept the supplemental sick leave program, the same wage increase percentage as the police and the WPS-

HIP health insurance like before except with higher deductibles and out-of-pocket expenses."

Union Exhibit 130 is a statement from a vice-president of the Police Protective Association of the Village of Shorewood which reads:

"Please be advised that our 1989-1990 contract with the Village was ratified with the provision that we would be paid time and one-half for our holidays in exchange for accepting the health insurance plan that the Village was offering at that time. This plan was not in writing at the time."

While the evidence regarding the quid pro quo is of a heresay nature, the undersigned nevertheless accepts the fact that the DPW and the police units received benefits in their negotiations which were not offered to the firefighters. The fact that there is no offer to the firefighters of a benefit to which either the police or DPW agreed is not persuasive because the fruits of the benefits agreed to in those units have previously been included in the firefighters' contract. The evidence shows that the paid health insurance benefit for retirees which was negotiated in the DPW contract has previously been included in the firefighters' contract. The evidence also shows that the agreement to pay time and one-half for holidays in the police contract merely closes the gap in the amount of holiday pay paid to police officers and the amount paid to firefighters. Consequently, the fact that there is no offer of these kinds made here is insufficient reason to reject the Employer offer.

Because the other units have settled for the same percentage wage increases as the Employer offers here; and because

the other units have agreed to the provisions for health insurance proposed by Employer in this dispute; and because the quid pro quo which the Union asserts exists in the other units failed to establish any benefits superior to those already enjoyed by the employees in the firefighters unit; and because the comparables, both internal and external, favor the adoption of the Employer offer; the quid pro quo argument advanced by the Union is unpersuasive.

The Union has also argued that the Employer offer with respect to health insurance should be rejected because the Arbitrator should avoid what the Union labels as a "probable unlawful employer final offer". The Union relies on Madison School District v. Wisconsin Employment Relations Commission, 133 Wis. 2d 462, 465 (1986); Green County (Sheriff's Dept.), WERC Decision No. 20308-B (11/84); and Milwaukee Deputy Sheriff's Assoc. v. Milwaukee County, 64 Wis. 2d 651 (1974). Madison School District held that the designation of the health insurance provider as well as changes made in coverage were mandatory subjects of bargaining. The Union then argues that because it is a mandatory subject of bargaining, Green County held that an employer was barred from making changes in health insurance programs during the pendency of a 111.77 interest arbitration proceedings. The Union then relies on Milwaukee Deputy Sheriff's Assoc. where the Supreme Court held that an award that ran contrary to the provisions of the statute conferring jurisdiction upon the Arbitrator was to be vacated. The undersigned has reviewed the cases cited by the Union and finds them to be

inapposite. The record evidence establishes that the Association has filed a prohibitive practice complaint against the Employer for its changes of hospitalization coverages. That complaint alleges a violation of the statute and is separate and distinct from the proceedings before this Arbitrator. Those allegations deal with conduct of the Employer in a matter which is not before this Arbitrator. The question here is whether the offer of the Employer for health insurance is an offer which should be adopted or rejected by the Arbitrator. The question of the legality of the changes the Employer made during the pendency of these proceedings is for the Wisconsin Employment Relations Commission to decide. Furthermore, the final offer of the Employer which contains the proposed modifications in health insurance coverage were contained in the final offer submitted to the Wisconsin Employment Relations Commission and were certified to impasse by them for consideration by this Arbitrator. There is nothing in the record that suggests that the Union at any time objected to the contents of the Employer's offer as filed with the WERC before the impasse was certified. The undersigned is of the opinion that objections to the Employer's offer should have been raised before the Employment Relations Commission prior to the time that the final offers were certified and the impasse was declared. Once the offers were certified by the WERC and the Arbitrator was appointed. the questions of the propriety of the offer are moot. It follows from the foregoing that the argument regarding the validity of the final offer raised by the Union is rejected.

From all of the foregoing then the undersigned concludes that

the Employer offer with respect to the health insurance modifications are supported by the record evidence and the statutory criteria.

THE HOLIDAY PAY ISSUE:

The Employer proposes to amend the holiday pay language the Union proposes the status quo. Motivation for the Employer proposal stems from a grievance filed by the Union which alleged that the language of the predecessor agreement entitles firefighters to holiday pay at a rate of time and one-half. The grievance stemmed from the Employer's agreement with the police that holidays in that unit would be paid at time and one-half. In order to clarify the language of the agreement, the Employer proposes that the language of the predecessor agreement which reads: "Of the ten holidays, four shall be given in time off and the remaining six shall be given as pay", be modified to read: "Of the ten holidays, four shall be given in time off on a straight time basis and the remaining six shall be given at straight time rates." The grievance filed alleging a violation of the predecessor agreement with respect to pay at time and one-half for holidays was pending arbitration at the time of these proceedings. That matter is unrelated to the issue presented to this Arbitrator and this Arbitrator makes no findings or conclusions with respect to the merits of that grievance. Therefore, the question of whether the predecessor agreement was violated by the Employer when it failed to pay holidays at time and one-half will have no bearing on the outcome here.

The record is undisputed that holidays have always been paid

to firefighters on the basis of straight time. The record also establishes that holidays were paid at straight time for employees in the police unit until the Employer in the last round of bargaining agreed that holidays there would be paid at time and one-half.

The Employer asserts that the police were granted time and one-half for holidays in order to provide police with holiday pay which more nearly approaches the amount of holiday pay generated by the holiday pay provisions of the firefighters' contract at straight time. The record evidence is that there are eleven paid holidays provided for police and ten for firefighters. Village Exhibit 34 establishes that in 1988 firefighters were paid ten twenty-four hour days of holiday pay which resulted in a payment of $2,510.40 for a firefighter who was at the top step of the salary schedule. In 1988 police employees were paid eleven eight and a quarter hour days of holiday pay which resulted in a payment of $1,328.58 to a police officer at the top step of the police schedule. Thus, there was a disparity of approximately $1,200.00 between the amount of annual holiday pay paid to police as compared to the amount of holiday pay paid to firefighters. With the advent of the time and one-half pay provision in the police collective bargaining agreement, in 1990 a patrolman at the top step of the schedule was paid $2,323.65 of holiday pay compared to $2,745.60 which will be paid to a firefighter at the top step of the salary schedule for the year 1990 under the Employer offer. Thus, the firefighters under the Employer proposal will continue to enjoy an excess of $400.00 more of holiday pay for firefighters

at the top step of the schedule than do police at the top step of their schedule. The equities of the Employer proposal based on these comparisons are obvious and need no further discussion.

In addition to the comparisons made in the preceding paragraph, there is in evidence Employer Exhibit 35 which makes comparisons of holiday pay provisions in firefighter contracts among the comparable communities of Brown Deer, Fox Point, Glendale and Whitefish Bay. Brown Deer provides five twenty-four hour holidays at straight time; Fox Point provides ten holidays at straight time paid as a lump sum; Glendale provides eight hours pay for ten holidays plus two twenty-four hour consecutive days as floating holidays; and Whitefish Bay provides seven twenty-four hour days off on a straight-time basis. From the foregoing it is clear that the prevailing practice in comparable communities with respect to holiday pay for firefighters is to pay holidays on a straight-time basis.

The comparison of the equities of holiday pay between police and fire as well as the comparisons of holiday pay among comparable communities establish a preference for the Employer offer dealing with holiday pay.

SUMMARY AND CONCLUSIONS:

The undersigned has concluded that "package parity" controls the parity issue and supports the Employer wage offer in this dispute. The undersigned has further concluded that the evidence supports the Employer position with respect to health insurance and with respect to holiday pay. It follows from the foregoing that the Employer offer will be adopted. Therefore, based on the

record in its entirety, and the discussion set forth above, after considering all of the arguments of the parties and the statutory criteria, the undersigned makes the following:

AWARD

The final offer of the Employer, along with the stipulations of the parties as certified to the Wisconsin Employment Relations Commission, and those provisions of the predecessor collective bargaining agreement which remained unchanged throughout the course of bargaining, are to be incorporated into the parties' collective bargaining agreement for the years 1989-1990.

Dated at Fond du Lac, Wisconsin, this 12th day of July, 1991.

Jos. B. Kerkman,
Arbitrator