

BEFORE THE ARBITRATOR

ROSE MARIE BARON

In the Matter of the Arbitration of a Petition by

Wisconsin Council 40, AFSCME, AFL-CIO

and

City of Elkhorn (Matheson Library)

Case 18, No. 55272

INT/ARB-8177

Decision No. 29410-A

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APPEARANCES

Laurence Rodenstein, Staff Representative, appearing on behalf of Wisconsin Council 40, AFSCME, AFL-CIO.

Robert Mulcahy, Esq., Michael, Best & Friedrich, appearing on behalf of the City of Elkhorn (Matheson Library).

I. BACKGROUND

The City is a municipal employer (hereinafter referred to as the "City" or the "Employer"). The Elkhorn Library Employees Union, Local 2171, Wisconsin Council 40, AFSCME, (the "Union") is the exclusive bargaining representative of certain City employees, i.e., a unit consisting of all regular full-time and regular part-time library employees. The City and the Union have not been parties to a collective bargaining agreement. On March 24, 1997, the parties exchanged their initial proposals; after three meetings no accord was reached and the Union filed a petition requesting the Wisconsin Employment Relations Commission to initiate binding arbitration. Following an investigation and declaration of impasse, the Commission, on July 10, 1998, issued an order of arbitration. The undersigned was selected by the parties from a panel submitted by the

Commission and received the order of appointment dated July 27, 1998. Hearing in this matter was held on November 4, 1998 at the Community Bank of Elkhorn conference room, Elkhorn, Wisconsin. No transcript of the proceedings was made. At the hearing the parties had the opportunity to present documentary evidence and the sworn testimony of witness.

Briefs and reply briefs were submitted by the parties according to an agreed-upon schedule. The record was closed on February 13, 1999.

II. ISSUE AND FINAL OFFERS

In negotiating this first contract, the parties have not been able to reach agreement on the following: wages; part-time employee eligibility for employer payment for insurance, i.e., health, life, disability, dental; scheduling of workday and week; premium pay, i.e., overtime, holiday, call-in; vacation scheduling; sick leave; funeral leave; leave of absence; grievance procedure; union activity on work time; terms of agreement and retroactivity; seniority; duration of the contract.

III. STATUTORY CRITERIA

The parties have not established a procedure for resolving an impasse over terms of a collective bargaining agreement and have agreed to binding interest arbitration pursuant to Section 111.70, Wis. Stats. (May 7, 1986). In determining which final offer to accept, the arbitrator is to consider the factors enumerated in 95-96 Wis. Stats., Employment Relations, Sec. 111.70:

7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislature or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The

arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

- 7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.
- 7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors.
 - a. The lawful authority of the municipal 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 the costs of any proposed settlement.
 - d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing similar services.
 - e. Comparison of the wages, hours and conditions of employment of the municipal 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 comparable communities.
 - f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.
 - g. The average consumer prices for goods and services, commonly known as the cost of living.
 - h. The overall compensation presently received by the

employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. 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. POSITION OF THE PARTIES

The following statement of the parties' positions does not purport to be a complete representation of the arguments set forth in their extensive briefs and reply briefs--- which were carefully considered by the arbitrator. What follows is a summary of these materials and the arbitrator's analysis in light of the statutory factors noted above.

It is noted that Sec. 111.70(7) which sets forth the factor to be given "greatest weight," i.e., state law or administrative limitations on expenditures that may be made or revenues which may be collected by a municipal employer, has not been raised as an issue in the instant case nor has any evidence been introduced for consideration by the arbitrator. It has, therefore not been considered by the arbitrator in reaching a decision.

Sec. 111.70(7g) commands the arbitrator to give "greater weight" to economic conditions in the jurisdiction. Library Director Valerie Lapicola testified that the library is a department of the City of Elkhorn and receives Chapter 33 City funds. The 1998 library budget was \$320,000 which includes a \$36,500 automation project amount.

Ms. Lapicola stated:

If the Union's final offer is selected, it will not

be good for the Library. It would lead to layoff and reduction in library hours to the public. We'd have to give up buying books and videos...this is not an option--we are a library. (Arbitrator's notes)

On cross-examination, Ms. Lapicola was questioned about her "dire prediction" and asked if the City couldn't make a decision to make a monetary adjustment for the library. She responded that the library has never received additional funds.

The Employer has not argued an inability to pay, but rather an unwillingness to meet what it characterizes as the Union's unreasonable economic demands in a first contract. Ms. Lapicola's fears of layoff and reduction in library services are speculative; there is insufficient evidence in this record for the arbitrator to conclude that economic conditions in the City of Elkhorn are such that it would be unable to fund the Union's final offer if it were selected.

The statutory criteria found in Sec. 111.70(7r), "other factors considered," are the ones relied upon by the parties in their argument and will, therefore, be addressed below.

Because the selection of the appropriate communities for purposes of comparability will have a major impact on the selection of one of the parties' final offers, that matter will be addressed first.

A. The Comparables

1. External comparables.

The following are the parties proposed comparable municipal libraries.

a. The Union

Beaver Dam
Cedarburg
Cudahy
Fontana
Hales Corners

Monona
Plymouth
Shorewood
Waunakee
Waupun

Hartford

Whitewater

b. The City

Burlington
Delavan
East Troy
Fontana
Jefferson

Lake Geneva
Waterford
Williams Bay
Whitewater

2. Internal comparables

a. The Union has proposed the following units of city government as comparables:

Department of Public Works (AFSCME)
Utility (IBEW)
Police Department (WPPA)

The Union has submitted data on wage settlements, benefits, holidays and sick leave for the three organized units cited above (Union Ex. 18, 19, and 20).

b. The Employer has also proposed these three units and has added as an internal comparable the Elkhorn Schools support staff (aides and secretaries). Data regarding wages, benefits, and language items are provided by the Employer for the four internal comparables (Employer Ex. 18, 19b, 21, 26-30, 35, 38, 40, 43b, 46, 49, 50, 52, 55, 57a-58, 62).

3. Discussion and findings of external and internal comparables

There is a need for objective criteria to select comparables in order to dispel the notion that parties can first advocate their positions and then search out comparisons which will support their goals. Appropriate comparisons should serve to ensure stability in future bargains and eliminate forum shopping.

Since this is the Elkhorn Library's first contract, the newly represented employees in the bargaining unit are starting at ground zero. There is a need for a structure upon which

to build for the future, that is a statement of the rights and responsibilities of both management and labor to ensure viable labor relations for the future. In the instant case in addition to wage and benefit issues, there are several non-economic issues which are contested, i.e., work schedule, grievance procedure, contract duration, et al, that will provide the necessary structure in years to come.

In adopting external comparables arbitrators have considered such standards as size of municipality, geographic proximity, economic conditions, similar tax levy, union affiliation, etc. In certain circumstances, arbitrators also will place weight on internal comparables, i.e., comparison with the Employer's other organized employees.

External comparables. In the instant case the Union argues that only cities whose library staffs are represented by labor organizations are appropriate for comparison; the City contends that libraries in communities which are geographically proximate is the appropriate comparison. The Union has proposed 12 communities whose library staffs are organized; several of these libraries are neither geographically proximate nor of similar size or economic status. Of the comparables selected by the Employer only two are unionized, i.e., Fontana and Whitewater, both of which are included in the Union's selection.

In the case of *Merton Joint School District No. 9*, Decision No. 27568-A (1993), this arbitrator discussed the issue of comparables in a first contract for a unit of regular full-time and regular part-time non-professional employees of the district. The Union proposed a grouping in which all the units were organized while the District proposed all unorganized comparables. The geographic proximity of the proposed comparables was considered in light of the what constitutes a reasonable commuting distance, i.e., an appropriate labor market. In that case, the record supported a finding that there was "nothing unusual about workers commuting twenty to twenty-five miles to a job" and the

Union's selection of comparable contiguous communities was deemed the more reasonable.

The Union's position in *Merton* regarding the choice of organized units only was supported by cogent arbitral precedents. It was this arbitrator's position then, and one which applies equally to the present case, that such a factor must be given recognition. Although the statute governing final offer arbitration has been changed since the time of the earlier case, there still remains a statutory basis for such a consideration under Section 111.70(7r)(j).

However, the facts of the instant case differ from *Merton* in that of those municipal libraries which are within approximately a 35-mile radius of Elkhorn (as proposed by the City), only two are represented by unions. The arbitrator must therefore conduct a further analysis in order to select appropriate comparables.

In *Benton School District* (Decision No. 24812-A, 1988), a case involving school support staff, this arbitrator found that neither party's comparables could be accepted. The Board contended that geographic proximity and size are the criteria to be afforded great weight in the determination of a labor market in cases involving school district support staffs; the Board also considered local economic conditions as measured by the local levy rates. It was asserted that if a district met at least two of the three tests of comparability, it was a reasonable comparable. The Union, on the other hand, argued that comparability be determined in two ways: comparison with similar employee groups in which wages, hours, and conditions of employment are established through the collective bargaining process, and second, by internal comparison with the District's other organized employee group, i.e., teachers. It was held that "Sufficient relevant information has been introduced into the record to permit the arbitrator to determine that comparable communities within a

radius of approximately 30 to 35 miles from *Benton*, both organized and unorganized, comprise an appropriate labor market."

The arbitrator acknowledges that the most appropriate comparison would be with libraries which have been organized and have a history of collective bargaining. Despite this arbitrator's preference for direct comparison with organized units, it is not appropriate to apply that standard in a mechanical manner. As Arbitrator Kessler noted when he considered organized school districts outside the usual athletic conference, ..." is the most appropriate way to determine comparables, provided there is some geographic proximity and similarity in size to the Webster District." *Webster School District* (Dec. 23333-A, 11/15/86). In the instant case, many of the libraries proposed by the Union are not geographically proximate.

For purposes of this analysis, the arbitrator will define proximity as those communities within approximately 35 miles of Elkhorn. Among the libraries proposed by the Union lie, several lie well beyond 35 miles from Elkhorn, e.g., Cedarburg, Shorewood, Waunakee, Waupun, and thus serious question arises as to whether these would fall within a reasonable commuting distance, particularly when the positions involved are part-time. Based upon the factor of geographic proximity/contiguity, it appears that the Employer's selection of libraries is the more reasonable. Both parties agree on the inclusion of Fontana and Whitewater which are geographically proximate and are covered by collective bargaining agreements.

It will therefore be necessary to evaluate other factors in determining the comparables: residence of current work force and commuting patterns; recruitment (local market vs. regional/statewide); population size; size of the employer; library circulation, and adjusted gross income, etc.

Residence of the current work force and the commuting patterns. Data for the part-time Elkhorn librarians provided by the Employer is shown below in Table 1.

TABLE 1

<u>Name</u>	<u>Residence</u>	<u>Position</u>	<u>No. of Hours</u>
Juliet Brunner	East Troy	Desk Clerk	21
Patricia Delaney	Elkhorn	Circulation Leadworker	32
Barbara Esch	Elkhorn	Desk Clerk	15
Gail Grice	Lake Geneva	Desk Clerk	20
June Haskins	East Troy	Paraprofessional Spec.	32
Judith Orange	Elkhorn	Desk Clerk	16
Judith Rockwell	Elkhorn	Paraprofessional Spec.	32
Jeanette Surma	Elkhorn	Desk Clerk	18
Patricia Wrzeskinski	Elkhorn	Desk Clerk	16
Jennifer Yurs	Elkhorn	Library Aide	10

The data show that seven employees live in Elkhorn, two in East Troy, and one in Lake Geneva (Employer Ex. 2A-2B). Valerie Lapicola, Library Director, testified that all part-time employees live within a 15-mile radius of Elkhorn. Based on the evidence regarding residence/commuting patterns, the Employer's position is the more reasonable.

The scope of recruitment for open positions. A determinant of the labor market can be elicited from examining where the Employer places its help-wanted ads. In October of 1988, the library advertised for a 16-hour per week Desk Clerk position in the Walworth County Shopper Advertiser, a local paper. No other advertising was used. Applications were received from people living in Fontana, Delavan, Darien, Lake Geneva, and Elkhorn. Two of these applicants were hired: Judith Orange and Patricia Wrzeskinski, both from Elkhorn. This evidence shows that advertising is limited in scope and supports the Employer's position regarding the local labor market.

Size of the proposed comparable communities. Table 2 summarizes the data.

TABLE 2
Population Comparison

UNION (Union Ex. 5;6;8a)	POPULATION	EMPLOYER (Employer Ex. 13)	POPULATION
Beaver Dam	14,884	Burlington	9,515
Cedarburg	15,927	Delavan	7,063
Cudahy	18,864	East Troy	3,055
Fontana	1,694	Fontana	1,680
Hales Corners	7,850	Jefferson	6,072
Hartford	9,021	Lake Geneva	6,000
Monona	8,548	Waterford	3,062
Plymouth	7,160	Williams Bay	2,100
Shorewood	14,121	Whitewater	13,023
Waunakee	7,700		
Waupun	9,356		
Whitewater	13,023		
ELKHORN	6,395	ELKHORN	6,395
Median	8,785	Median	6,000
Deviation	- 2,390	Deviation	+ 395

Inspection of Table 2 reveals that there is a greater range in the population of the communities provided by the Union and that Elkhorn falls well below the median in size. The communities selected by the Employer yield a median which is slightly less than the population of Elkhorn. Based on these data, the arbitrator finds the Employer's comparables to be more representative of Elkhorn than those submitted by the Union.

Data relating to the composition of libraries are shown in Table 3.

TABLE 3
Comparison of Libraries: Circulation and Paid FTE

UNION (Exhibit 6)	Circulation	Paid FTE	EMPLOYER (Exhibit 13)	Circulation	Paid FTE
Beaver Dam*	253,766	11.8	Burlington	199,927	11.9
Cedarburg	173,562	9.2	Delavan	87,552	6.2
Cudahy	200,674	11.2	East Troy	46,271	3.7
Fontana**	31,529	2.7	Fontana	31,529	2.7
Hales Corners	136,827	8.3	Jefferson	89,203	6.0
Hartford	195,674	9.8	Lake Geneva	123,280	11.7
Monona	280,091	12.3	Waterford	62,139	5.0
Plymouth	104,606	7.2	Williams Bay	46,807	2.8
Shorewood	244,542	10.3	Whitewater	174,143	7.9
Waunakee	127,738	4.9			
Waupun*	110,570	6.3			
Whitewater	174,143	7.9			
ELKHORN	100,300	7.4	ELKHORN	100,300	7.4
Median	173,853	8.8	Median	87,552	6.0
Deviation	- 73,553	- 1.4	Deviation	+ 12,748	+ 1.4

*Data from Union Ex. 5; **Data from Employer Ex. 13

Table 3 shows that of the comparable libraries proposed by the Union, Elkhorn falls well below the median in circulation. With its circulation of 100,300 it barely reaches the minimum circulation to fall in Category C of Wisconsin libraries (See, e.g., Employer Ex. 65). Only Fontana has a lower circulation; indeed the Union exhibits did not provide any

information about Fontana as it is not a Category C library. The comparison submitted by the Employer places Elkhorn above the median, but at a less magnitude of deviation. Based upon these data, the arbitrator concludes that in terms of circulation, the Employer's comparables are the more appropriate.

The deviation from the median at plus and minus 1.4 Paid FTE does not reach a level of significance and in effect cancel each other out. No weight will be placed on this factor.

Adjusted Gross Income (AGI) per return. The Union has provided data comparing Elkhorn with the 12 communities it has selected as comparables (Union Ex. 8). These figures range from a low of \$26,490 in Whitewater to a high of \$52,795 in Cedarburg; the median is \$38,745. Elkhorn's \$30,170 is therefore \$8,575 below the median. The Employer has not provided similar data for its nine comparables, but has challenged the Union's reliance on this information since it is not shown whether the adjusted gross income per tax return represents one or more incomes, joint or single returns, and whether employment is full-time or part-time. It is argued by the Employer that the disparate nature of the Union selected comparables is reflected in the fact that the Elkhorn AGI is approximately 20% below the average. Without data from the Employer, the arbitrator is unable to subject both sets of figures to an analysis to determine which of the two samples is closer to the median. It is therefore held that there is insufficient relevant evidence of adjusted gross income for purposes of arriving at a decision on the selection of the comparables.

Based upon the discussion above, the arbitrator concludes that the communities proposed by the Employer are more appropriate for purposes of comparison to the Elkhorn Library in this interest arbitration. Although, as the arbitrator has noted, comparisons with

organized units is preferable, adopting the Union's position would do grave harm to the equally important concept of the labor market. Perhaps in a situation where the positions in question were full-time, highly-paid professional positions, applicants for employment might well be willing to drive from Dane, Washington, Dodge, or Milwaukee Counties to Elkhorn. But to make that assumption for part-time clerks, aides, and paraprofessional library positions would be unrealistic.

It is therefore held that the following external comparables will be utilized in the analysis of the parties' final offers:

Burlington	Lake Geneva
Delavan	Waterford
East Troy	Williams Bay
Fontana	Whitewater
Jefferson	

Internal comparables. Both parties rely on comparisons with the City's organized units, i.e., Police Department (WPPA), Utility (IBEW), and DPW (AFSCME); the City has added the Elkhorn Schools Support Staff (no information was provided as to union affiliation).

There was no objection by the Union at hearing to the inclusion of the support staff in the City's exhibits including internal comparables nor in the post-hearing briefs filed. Employer Ex. 14 indicates that this unit is composed of 10 full-time and 28 part-time employees. It is the arbitrator's opinion, and it is so held, that inclusion of this support staff, which is predominantly part-time, as are the library employees involved in this interest arbitration, is appropriate. Therefore, the analyses which follow will include the Elkhorn Schools support staff.

There has been some reluctance among arbitrators to place considerable weight on a comparison of differing bargaining units in the same community. The concern regarding

reliance on internal comparability involves the difference in the occupational make-up of the units under consideration. For example, in considering a unit of professional social services employees in *Trempealeau County* (Decision No. 26389A-A, 12/13/90), Arbitrator Morris Slavney followed an earlier analysis by Arbitrator Frederick Kessler. Kessler had held that courthouse employees were "white collar" whereas highway department unit employees consisted primarily of "blue collar" employees. Slavney concluded that the internal comparison should be of "white collar" with "white collar." In a case involving a school district's support staff, this arbitrator held: "The disparate nature of the two occupational groups, i.e., teachers versus non-teaching support staff (cooks, custodians, secretaries) leads the arbitrator to conclude that this factor is not sufficiently relevant to be accorded weight in determining which of the parties' final offers is the more reasonable." (*Benton School District*, *supra*.)

Following that logic in the instant case, a direct comparison of library employees whose skill, effort, and responsibility are so different from the work performed by police officers, electrical department employees, and maintenance staff would be difficult. The statute does provide for a comparison of municipal employees involved in the arbitration with the wages, hours, and conditions of employment with other municipal employees in the community. Since both parties agree on such a comparison (although the Union has not included the school support staff), and there are so few organized units in the external comparables, a review of these organized municipal units is reasonable. However, because of the disparity of skill and training required of the employees in these internal units, the arbitrator believes that it is appropriate to apply a lesser quantum of weight to this analysis.

Before beginning the task of comparing the Union's and City's offers on specific

economic and non-economic issues, the arbitrator will address the City's contention that the Union has failed to follow the traditional "status quo-quid pro quo" method in its proposals. In its offer the City has substantially continued the status quo found in the Library policies with the addition of certain benefits for its part-time employees. The City argues that although the Union proposes to improve benefits to a far higher level, it has not shown the requisite need for its proposed change nor has it provided a quid pro quo for the these changes.

This arbitrator has previously considered this issue and concluded that, in a first contract, there is nothing to be traded off since whatever the employees have gotten in the past was based upon the City's largesse and such benefits could have been revoked at any time. In *Peshtigo School District*, Decision No. 27288-A (1993) this arbitrator wrote:

The District contends that the Association's reliance on the previous Master Agreements is misplaced. These unilateral contracts, without the give and take of bargaining, do not constitute a status quo, and thus are not applicable to internal comparability....

In *Benton*....the District asserted that the Union must show a compelling reason to change the status quo, which in that case meant its wish to **increase** the benefits which they had been receiving prior to unionization. This arbitrator did not adopt the "compelling reason" standard proposed by the District since that standard is traditionally used when a contract has been in existence and the Union attempts to re-negotiate certain provisions. I said, "There is no status quo because there are no collectively bargained conditions of employment; any benefit previously received by the Employees in the newly created and represented bargaining unit is the result of unilateral employer largesse or goodwill."

In *Benton* the Union was seeking added or improved benefits and conditions of employment, the goal of all unions in collective bargaining. I held that the Union did not bear the burden of showing need each time it sought to improve its position. Rather it was determined that instead of such a requirement, "Each of the proposed non-wage benefits will be considered on the same basis as that of wages, i.e., compared

with the level of benefits received by similar employees in the selected comparable communities." Such a standard comports with the statutory criteria set forth earlier.

The Union's objective, to improve the status quo, goes to the very essence of its organizational and representational function. This arbitrator believes this will be accomplished by applying the standards set forth by the Wisconsin statute set forth above.

In this interest arbitration comparison with municipal libraries in the labor market, as discussed above, will be the primary determinant of which of the final offers will be selected. A review of the internal comparables will then be conducted in order to discover similarities and differences in benefits and then to determine the appropriate weight this information shall be given.

It should be stated at the outset that the selection of one party's proposed comparables significantly affects the outcome of an interest arbitration proceeding in its favor. In the instant case the arbitrator has selected the Employer's external comparables, nine municipal libraries within approximately 35 miles of Elkhorn. Often in cases where there are numerous unresolved issues, arbitrators base their decisions on what the parties have designated as the most important issues. In this first contract, with numerous economic and language provisions unresolved, the parties have not provided the arbitrator with that kind of specificity. In the interest of brevity and economy, the arbitrator believes the best approach is to address quantifiable issues first. The more reasonable offer will then be selected, carrying along with it into the award all contractual language provisions including duration of the contract.

B. Wages

The task of comparing the offers of the parties on wages is complicated by the differing methodologies each has selected in its exposition. For example, the Union has

taken the data for its comparables and divided wage levels for 1998 into three categories, i.e., low, intermediate, and high. In its brief, pages 17-22, these tables are set forth, however, their efficacy is affected because there is no explanation of which job classifications are included within these three categories.

Going back to the final offer submitted to the Wisconsin Employment Relations Commission on June 16, 1998 (Union Ex. 1, p 3-4) the Union presents its salary schedule for three years, 1997, 1998, and 1999. Four positions, Range 1 through 4, with job titles are shown. These titles are similar to those which were in effect prior to the union organization. They are Library Shelver Aide; Desk Clerk, Circulation Leadworker, and Paraprofessional. Progression through the schedule from date of hire begins after a 6-month probation, 12 months, 24 months, 36 months. The Employer states in its brief that the parties are in agreement on the number of steps and the length of service required for progression on the schedule (Employer's brief, p. 22).

It is the Employer's position that its data, which places individual employees on the schedule, for the two year contract it proposes, is a more reasonable way of determining the actual cost of the wage portion of the contract. These data show an average hourly rate prior to the negotiations of \$7.01 per hour for the part-time librarians.

For 1997, the average rate in the Library offer is \$7.50 or a 7.0% increase; the Union offer is \$8.00 or 14.1% increase. For 1998, the Library offer is \$0.92 per hour or 12.8% while the Union offer is \$1.40 or 19.2%. The Employer has not provided a 1999 figure; the Union's offer is \$8.92 per hour or 6.1%.

The Employer argues that there is no rationale for a 19.2% increase over a two-year period as is found in the Union offer and it asserts that the Union is attempting to make a "catch-up" argument for these employees.

The arbitrator believes that the Employer's data provides for an effective way of comparing the wage offers of the parties with the comparables which have been adopted, i.e., the libraries proposed by the Employer. Inspection of the table on page 29-30 of the Employer's brief reveals that in addition to the comparable Libraries, the Elkhorn schools have been included as a comparable. The arbitrator does not believe that its inclusion here, as opposed to an internal comparable along with the other city unions will not skew the outcome and therefore it will be considered as presented herein.

The table shows that in the minimum category the City's offer is slightly below the average, i.e., 1.2%, whereas the Union's offer exceeds that of the average by 11.4%. In the maximum category, the City's offer exceeds the mean by only two cents or 0.2%. In the maximum category, the Union's offer exceeds the mean by \$.42 or 5.0% while the City's offer of \$8.47 is almost identical with the average of \$8.45. In the Average maximum category, the Union's offer exceeds the average by 9.6%; the City's offer is 5.2% above the average. In each case the City's offer more closely approximates the average of the nine proposed comparables.¹

As discussed earlier, the selection of the comparables, particularly in the case of a first contract, will determine to a considerable extent, which of the parties offer will prevail. The large difference between the wages proposed by the City and the Union in this case is a function of that determination. The arbitrator is bound by the statute to apply objective criteria and may not consider equitable arguments made by the Union. Under those strictures, the arbitrator must conclude that the City's offer more closely approximates the wages paid to municipal employees performing similar services, i.e., non-masters level library employees.

¹The City's table on page 29 of its brief does not include Whitewater; as

C. Benefits

1. Proration of benefits

The City has agreed to extend insurance coverage, e.g., health, dental, and disability insurance as well as vacation accrual to part-time employees under the new contract. This new coverage would be limited under the City's offer; the Union's offer is prorata for all employees regardless of the number of hours worked. For example:

Health Insurance: The City would pay 75% for employees working 30 hours or more; other employees would not receive the benefit.

Dental Insurance: The City would pay 75% for employees working 30 hours or more; other employees would not receive the benefit.

Disability Insurance: The City would pay on a prorata basis for employees working 30 hours or more; other employees would not receive the benefit.

Life Insurance: The City would pay on a prorata basis for employees working 30 hours or more; other employees would not receive the benefit.

Vacation: For employees working more than 30 hours, the City would pay prorata at 75%; for those working more than 20 but less than 30, the City would pay prorata at 50%; for those working more than 10 hours but less than 20, the City would provide 24 hours vacation per year; for those employees working less than 10 hours per week earn 1 hour for every 26 hours worked. The Union would calculate vacation prorata based on hours worked in the previous year.

Other data are presented in the Employer's brief (p. 33-34), i.e., sick leave, funeral leave, leave of absence, holidays, et al. Costs for the new paid time-off benefits are set forth by the Employer for 1997 in Ex. 10 and 11 and Employer's brief, p. 37-38. The

noted earlier, an internal comparable, Elkhorn Schools, is included.

Employer has used 1997 as the baseline year since 1998 data were not available at the time of the hearing. The cost increase associated with the new paid time-off benefits (Holiday, vacation, sick leave) are summarized and reveal that the Union's offer the average increase per hour is \$.54 or 7.7%, while the Employer's is \$.32 per hour or 4.6%. The Employer describes its offer as substantial and, combined with its offer on wages, deserves acceptance of its offer.

Comparison with the relevant libraries will be the determining factor on benefits:

Health Insurance: The data on health insurance for part-time employees show that of the nine libraries, seven do not provide paid health insurance. One library, Jefferson, pays prorata for those working at least 24 hours per week; Whitewater pays part-time employees prorata. The Elkhorn Schools pays 50% for aides who work seven hours a day. Comparison of this information with the Union's offer of prorata payment with no threshold leads to the conclusion that the Employer's offer more closely approximates that of the comparables and it is therefore adopted.

Dental Insurance: Three libraries do not provide dental insurance for any employees; six libraries did not provide dental insurance to part-time employees, Elkhorn Schools pay 75% to school aides who work 7 hours a day. The City's offer is 75% paid benefit for employees working more than 30 hours versus the Union's offer of prorata regardless of hours worked. The Employer's offer more closely approximates that of the comparables and is adopted.

Long Term Disability: Eight libraries do not provide this benefit; one library pays 100% for employees working more than 600 hours; the Elkhorn Schools pay 100% for aides working 7 hours a day. The Employer's offer is 100% for employees who work more than 30 hours per week while the Union's offer is prorata regardless of hours worked. The

Employer's offer herein is closer to that of the comparables and is therefore adopted.

Vacation: Among the comparable libraries, part-time employees receive vacation as shown:

Burlington	Shelvers: no benefits Others: prorata
Delavan	20+ hours: 50% of full time benefit
East Troy	24+ hours: 50% of full time benefit
Fontana	1 week based on hours worked
Jefferson	20+ hours: prorata
Lake Geneva	20+ hours: 1, 2, or 3 times weekly hours
Waterford	no benefits
Williams Bay	1/3 full time vacation if work + 600 hours per year
Whitewater	prorata

The Employer's offer as noted above sets a threshold of 30 hours for 75% of the full-time benefit and of 20 hours for 50%. This is the same as two of the comparables and somewhat more generous than that of East Troy for 50% at 24+ hours. Only one of the comparables, Whitewater, provides a prorata benefit which is the same as the Union's final offer. While these data do not lend themselves to a purely quantitative analysis, inspection of the data lead to the conclusion that the Employer's offer more closely approximates that of the comparables than does the Union's. The Employer's offer on vacation is therefore adopted.

Paid Holidays: Part-time employees presently receive holiday pay only if they work on a holiday to a maximum of 8 days. The City's offer is for 8 paid holidays for part-time employees working more than 10 hours per week. The Union offer is for 10 paid holidays with no work hour limitation. Comparison with the nine libraries and Elkhorn Schools shows that the City's offer exceeds that of eight of the nine libraries with only Whitewater granting 10 paid holidays. The Elkhorn Schools and Williams Bay provide no benefit to part-time employees, while Burlington does not provide the benefit to shelvers. East Troy does not grant the benefit to the category of "page." The more than 10 hour threshold in

the City's offer provides the benefit for more employees than three of the other library which set the hours required at more than 15 or 20. These data reveal that only one of the comparables, Whitewater, comports with the Union offer. Thus, the City's offer is supported by the comparable data and is adopted.

Pay for holiday work: Part-time employees were previously paid straight time when assigned to work on holidays. The City offer proposes to pay time and one-half; the Union offers time and one-half plus pay for the holiday, i.e., two and one-half time. Inspection of the comparable libraries show that two libraries have no paid holiday benefit, five pay straight time or time off, one library is not open on holidays, thus no benefit, and one library offers two and one-half time. The City offer is deemed to be the more reasonable and is therefore adopted.

Sick Leave: The parties have agreed on the amount of the full-time employee benefits at one day accrual for each month of service with a maximum accrual of 120 days. The City's offer for the part-time employees continues the present policy on accrual of paid sick leave with benefits prorated on number of hours worked, i.e., 30+ hours, 72 hours, with an accumulation of 720 hours; 20-29 hours, 48 hours, with an accumulation of 480 hours; 10 to 19 hours, 24 hours, with an accumulation of 240 hours. Employees working fewer than 10 hours get no benefit. The Union proposal is for 12 days prorata for all part-time employees, with an accumulation of 120 days.

The comparables differ considerably in their sick leave policies (Employer Ex. 50). The part-time shelvers do not receive benefits in Burlington and Delavan, however, other employees receive partial benefits. No benefits are provided in East Troy and Fontana; Lake Geneva combines vacation and sick leave. Two libraries, Jefferson and Waterford require a minimum of 20 hours per week with the former giving 12 days and the latter 6 days a year

of sick leave; one library requires 600 hours worked per year for 4 days of sick leave. In order to rationalize these differences, the arbitrator has calculated the amount of sick leave a 20-hour employee would receive. Of six libraries, four offer 6 days of sick leave, one offers 4 days, one offers 12. Both the City's and the Union's offers provide the same benefit to 20-hour employees, i.e., 48 hours/6 days. The City's offer does not provide a benefit to employees working fewer than 10 hours per week (all present library part-time employees work more than 10 hours [Employer Ex. 2a-b]). Thus, an employee working less than 20 hours per week would not receive benefits in Jefferson, Waterford, or Williams Bay, but would in Elkhorn. The City's offer provides coverage at a more generous level than several of the comparables.

If the offers of the parties are compared at the 32 hour per week figure (three employees work 32 hours), the City offer provides 72 hours and the Union, 76.8 hours. Of the comparables only two libraries, Burlington and Whitewater, are in accord with the Union's offer.

Turning to the issue of accumulation of sick leave, the range among comparables is 20, 60, and prorata at 36, 96, 140, to unlimited days. The Union's proposal is for 120 days for all part-time employees, while the City offers 90 days at + 30 hours, 60 days at 20-29 hours, and 30 days at the 10 to 19 hour level. With the exception of Whitewater, which has unlimited accumulation, the Union's offer exceeds all of the comparables.

Based upon these data, the arbitrator concludes that the Employer's offer on sick leave is the more acceptable. Because of this finding, it is not necessary to reach the use of sick leave or payout at retirement, death or disability which will, of necessity, attach to the finding in favor of the Employer.

Remaining unresolved issues: It is the arbitrator's belief that there has been

sufficient persuasive evidence, as discussed above, to reach the conclusion that the City's final offer more closely approximates the external comparables. Thus, insofar as the several remaining issues are concerned, their outcomes will not have a sufficient impact on the final award. This is not to denigrate their importance, but it rather an attempt by the arbitrator to avoid unnecessary and lengthy discussion.

D. Internal Comparables

As indicated earlier the weight to be given to a comparison with the three City of Elkhorn organized units (AFSCME, Police, and IBEW) will be of a lesser quantum that accorded to the external comparables. These three units all received wage increases of 3.5% in 1997. Only two units, the IBEW and Police have settled for 1998; these settlements were for 3.5%.² None of these units employ part-time workers at this time although the contracts for AFSCME and IBEW provide for such employees.

The City's offer for wage increases in 1997 and 1998 are 7.0% and 5.8%; the Union's proposal is 14.1% and 5.1%. It is apparent that both parties offer are in excess of the internal settlements.

AFSCME and IBEW provide prorata benefits such as health, dental insurance, paid vacation; the Police contract has no benefits for part-time employees. For sick leave, the benefit offered is prorata 12 days; this matches the Union's proposal. Sick leave accumulation is 120 days in the Union offer and AFSCME; IBEW provides 65 days prorata. The Union offer on health, dental, and life insurance are almost identical with that of AFSCME and IBEW except for the Union's provision that employees work more than 20 hours in order to receive the prorata benefit. Employees working fewer hours pay for health insurance. The Union's offer for paid vacation is prorata, based on the previous year, while

²Testimony by Robert Mulcahy that the Police wage was 2.9% with the

AFSCME and IBEW are prorata. The Union's request for holidays at 10 is identical with the two comparables.

These data indicate that the Union's final offer on benefits more closely approximates that of the two internal comparables which provide benefits to part-time employees in their contracts than does the City. It is to be noted that the City does not presently have any part-time employees in the departments represented by AFSCME, IBEW, or the Police unions. Insofar as wage increases are concerned, the Union's offer far exceeds that of the three City comparables.

The Union seeks social and economic justice for the librarians and asserts that the Employer's unwillingness to provide library employees with the same benefits as other City employees is unfair and unreasonable. The arbitrator recognizes that the Union's goal is to improve the status of wages and conditions of employment for its newly organized unit of librarians. However, a goal of matching the level of benefits in a first contract with long-established bargaining units with a history of give and take during negotiations, may not be achievable. This arbitrator does not believe that it is possible to mechanically compare one unit, whose employees' levels of skill, effort, and working conditions, differ markedly from those of other City units. For example, an employer may believe that it is appropriate to provide employees who work outdoors in icy winter conditions and extremely hot summer weather with a higher wage rate and/or additional or different benefits. Since interest arbitration properly is the substitute for what *could* have occurred in collective bargaining, it would be improper for the arbitrator to substitute her judgment in determining the value of positions and how an employer and labor organization might reach reach agreement on compensation.

balance attributable to health and other benefits.

For these reasons, this arbitrator cannot place significant weight on the results of comparing the final offer of the Union with the internal comparables.

V. CONCLUSION

After thorough review of the exhibits admitted at the hearing, the arbitrator's notes, the briefs and reply briefs of the parties, and based upon the discussion above, the arbitrator finds that the final offer of the Employer, the City of Elkhorn (Matheson Memorial Library) is the more appropriate of the two final offers before the arbitrator.

VI. AWARD

Based upon the discussion above, the final offer of the Employer shall be adopted and incorporated into the parties' Collective Bargaining Agreement for 1997-98.

Dated this 26th day of March, 1999 at Milwaukee, Wisconsin.

Rose Marie Baron, Arbitrator