ARBITRATION OPINION AND AWARD

In the Matter of Arbitration	)	
Between	)	
CITY OF WHITEWATER (Police Dispatchers)	)	Case 59 No. 56133 INT/ARB-8423
And	)	Decision No. 29432-A
TEAMSTERS LOCAL UNION NO. 579	)	

Impartial Arbitrator

William W. Petrie
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Hearing Held

Whitewater, Wisconsin
July 29, 1999

Appearances

For the Employer — LINDNER & MARSACK, S.C.
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BACKGROUND OF THE CASE

This is a statutory interest arbitration between the City of Whitewater and Teamsters Local Union #579, representing a bargaining unit of Police Dispatchers, with the matter in dispute the terms of a two year renewal labor agreement covering January 1, 1998 through December 31, 1999. After their failure to reach a full negotiated settlement, the Union on February 16, 1998 filed a petition with the Wisconsin Employment Relations Commission requesting final and binding arbitration, pursuant to Section 111.70 of the Municipal Employment Relations Act. Following an investigation by a member of its staff, the Commission issued certain findings of fact, conclusions of law, certification of the results of investigation, and an order requiring arbitration on January 28, 1999, and on February 25, 1999 it appointed the undersigned to hear and decide the dispute. A hearing took place in Whitewater, Wisconsin on July 29, 1999, at which time both parties received full opportunities to present evidence and argument in support of their respective positions, both thereafter closed with the submission of post-hearing briefs, and the record was closed by the undersigned effective September 2, 1999.

THE FINAL OFFERS OF THE PARTIES

The certified final offers of the parties, hereby incorporated by reference into this decision and award, are identical in certain areas, were modified in various respects at the hearing, and provide, in summary, as follows:

(1) The *final offer of the Employer*, received on November 13, 1998, provides for the terms of the prior agreement to remain in full force and effect, except as modified by the tentative agreements of the parties and as follows:

   (a) Amendment of Article 30 to increase all wage rates by 4.0% effective January 1, 1998, and by 4.0% effective January 1, 1999.

   (b) Effective with the award in these proceedings, addition of a new classification entitled "*Records/Communications Coordinator*" at an hourly pay rate of $13.10 per hour, plus the applicable percentage pay increases referenced above.

(2) The *final offer of the Union*, received on November 10, 1998, provides for the terms of the prior agreement to remain in full force and effect, except as modified by the tentative agreements of the parties and as follows:
   (a) Amendment of Article 30 to provide as follows:

(i) Increased wage rates for the *Dispatcher* and the *Records Communications Aide Classification* of 3.5% effective January 1, 1998, 2% effective July 1, 1998, 3.5% effective January 1, 1999, and 2% effective July 1, 1999.

(ii) The *Data/Entry Dispatcher* to receive the *Dispatcher's* rate of pay for all hours worked in that classification.

(iii) All new hires to receive 95% of the base pay for the first eighteen months of employment.

(b) Amendment of Article 12 to incorporate Flex Shift Hours and wording from side letter of agreement dated September 19, 1994.[1]

THE ARBITRAL CRITERIA

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs the Arbitrator to utilize the following criteria in arriving at a decision and rendering an award:

> "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 to an 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.
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> 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:
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> 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.
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> d. Comparisons 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. Comparisons of wages, hours and conditions of employment of

[1] While the parties were clarifying their respective final offers at the start of the scheduled hearing, the Employer agreed to implement this portion of the Union's final offer.

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 in comparable communities.

f. Comparisons 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 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 municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pension, 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 hearing.

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."

POSITION OF THE UNION

In support of the contention that its is the more appropriate of the two final offers before the Arbitrator, the Union emphasized the following principal considerations and arguments.

(1) By way of introduction that the following considerations should be determinative.

(a) The only issue between the parties is wages.

(i) The City proposed a 4% wage increase in each year of the renewal agreement, while the Union proposes split 3.5%-2% increases in each year.

(ii) The Union also proposes that the data entry/dispatcher classification be paid dispatcher wages for the time she spends dispatching.

(iii) The City proposes a new records/communication coordinator position with an increased wage rate.

(b) The Union's final offer is the more reasonable because it provides a *quid pro quo* for a major change in health insurance, it brings the bargaining unit *closer to the average wages paid by the external comparables*, and it compensates the dispatchers for a *significant increase in duties since the parties' last agreement*.

(c) That when the above considerations are considered in conjunction with the application of the appropriate statutory criteria, the Union's final offer should be selected as the more reasonable and equitable.

(2) The City must provide an appropriate *quid pro quo* for the change in health insurance.

(a) The issue is whether the City's offer of a 4% wage increase for each year of the agreement is an adequate quid pro quo for the health insurance change that has been accepted for the bargaining unit.

(b) There is ample arbitral authority that when a party seeks a significant change from the status quo ante, such change must be supported by a quid pro quo.[2]

(c) The City has offered no quid pro quo of a tangible value in exchange for a significant change in health insurance.

(i) Under the old agreement the City paid the full premium for the Wausau Health Insurance Plan, a traditional indemnity plan with no restrictions on providers.

(ii) Under the new agreement the City will no longer provide the Wausau Plan, but rather the Wisconsin Public Employers Group Health Insurance Program, i.e., the state plan.

(iii) The City will now pay 105% of the lowest HMO premium toward either the state plan or to more expensive HMO plans. As a result, an employee with a family who wishes to maintain choice in health care providers will have to pay $187.02 per month during 1999, with the rate in future years dependent upon the premium charged by the cheapest HMO offered by the Employer.[3]

(iv) The bargaining unit recognizes that health care costs are increasing and it is no longer uncommon for employers to shift the burden of increasing costs to the employees through managed care and premium sharing; the Union has agreed to the City's health care proposal, but it seeks a quid pro quo to compensate employees for the increased costs and reduced benefits resulting therefrom.

(v) The City offered 4% wage increases are simply an insufficient quid pro quo. The external comparables had wage increases ranging from 1.5% to 5% for 1998 and 2.0% to 4% for 1999; while the City's offer keeps pace with wages, therefore, it offers nothing extra to compensate employees for their increased health care costs.[4]

(vi) Under the City's offer, a Dispatcher will earn $166.00 more per month in 1999 than in 1997, but will have to pay $187.02 per month to maintain comparable health insurance. Even the employee moved into the City

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[2] Citing the following arbitral decisions: *Arbitrator McAlpin* in Dane County, Dec. No. 27804-A, page 28 (1994); *Arbitrator Petrie* in Sheboygan County, Dec. No. 27585-A, page 11 (1994); and *Arbitrator Malamud* in Sheboygan County (Highway Dept.), Dec. No. 27719-A (1994).

[3] Citing the contents of Union Exhibit #1.

[4] Citing the contents of Employer Exhibit VI(A).

proposed "Records/Communications Coordinator" position will have only $46.98 more in monthly income in 1998 than in 1997 if she maintains the same level of health insurance coverage.

(vii) Realistically, the City offer results in a net loss to most employees unless they switch to a low cost HMO; with the health insurance change, the City's offer is a one-sided package that changes the status quo by placing the brunt of health insurance cost increases on employees without compensating them for the change.

(3) Consideration of the *external comparables* demonstrate that the Union proposed quid pro quo is reasonable.

(a) The Union's comparable pool consists of those set forth by *Arbitrator Tyson* in City of Whitewater, Dec. No. 28710 (1997), with the exclusion of the cities of Elkhorn and Jefferson because they do not provide 911 emergency services.

(b) Since Elkhorn and Jefferson are not PSAPs, their dispatchers do not handle the same level and intensity of emergency calls, and their jobs are not comparable to the dispatcher positions in Whitewater or to the other comparables.

(c) The comparables demonstrate that the Union is justified in seeking 3.5%-2% split increases each year as a quid pro quo for the health insurance changes. Under either final offer the Dispatchers' wages will rank seventh among the eight comparables in 1998 and 1999; since Whitewater Dispatchers thus lag behind the comparables, they should get a wage increase greater than those of the comparable even before factoring in the necessary quid pro quo.[5]

(d) While those in the bargaining unit appear to lead the comparables in starting wages, no member of the unit is a starting employee; it is thus appropriate to compare the top wage rates because most Whitewater Dispatchers currently receive the top rate and would be receiving the top rate among the comparables. While dispatchers reach the top rate in Lake Geneva after four years, in Oconomowoc and Burlington after three years, and in Watertown after two years; six of the seven Whitewater Dispatchers have more than two years of seniority, five have more than three years, and four have more than four years.

(e) The settlements among the comparables vary widely for 1988-1999: the smallest settlement is in Fort Atkinson with 1.5% and 3.5% yearly increases; and the largest settlement is in Oconomowoc with 5% and 3.5% yearly increases.[6]

(i) While the Union proposed overall lift of 11% is the largest among the comparables, it is spread-out over four separate increments during the two year contract term.

(ii) The average wage increase among the six comparables is 3.75% for 1998 and 3.66% for 1999; thus the quid pro quo sought by the Union, in response to the drastic

[5] Citing the contents of Union Exhibit #8.

[6] Citing the contents of Employer Exhibit VI(A).

change in health care plans and costs, is merely 1.75% for 1998 and 1.84% for 1999.

(f) The range of health insurance plans among the comparables demonstrates that some have more generous benefits than Whitewater: Burlington pays up to $593.00 per month toward a family health insurance premium, exceeding the amount by Whitewater by $87.00 per month; Lake Geneva simply pays the full cost of the insurance with a $500 annual deductible, with its employees paying $1,744.24 less for family coverage than a Whitewater employee who maintains the current level of benefits; Watertown's and Oconomowoc's health plans are similar to those adopted by Whitewater, but they also have the highest wages among the comparables.[7]

(g) Pursuant to the above, there is no trend among the external comparables favoring the City's health insurance proposal, and the prior health insurance benefits in Whitewater were not sufficiently greater than the comparables to obviate the need for a quid pro quo.

(4) Consideration of the *internal comparables* demonstrate that the Union proposed quid pro quo is reasonable.

(a) There is no pattern of internal settlements to justify the City's withholding an appropriate quid pro quo from the Dispatchers: the DPW unit accepted the City's health insurance proposal and received split increases totaling 4% in 1998 and 4.5% in 1999; the police unit accepted the City's accepted the City's health insurance proposal and received non-split 3.5% increases in 1998 and 1999; the professional/clerical unit is awaiting an arbitral decision on its contract; the only consistency among the units is that they all have agreed to the City's health insurance plan.

(b) While the DPW and the police units settled for less in wage increases than that sought by the Union in these proceedings, these units have some enhanced fringe benefits: both are allowed to accumulate more compensatory time than the dispatchers; the DPW unit has a more generous sick leave payout; and the police have a vacation bonus. Until there is consistency and parity in fringe benefits and wage settlements, it urges that wage comparisons should not be accorded significant weight.

(5) The dispatchers are entitled to higher wages to compensate them for increased job duties.

(a) Since the last collective agreement, the City has taken over the dispatching duties for the University of Wisconsin - Whitewater, which has also added several additional emergency telephones which ring in the dispatch office.[8]

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[7] Citing the contents of Union Exhibits #1 and #9.

[8] Citing the contents of Union Exhibit #16.

(b) A study done prior to the merger of the University and the City, indicated that the City's dispatch office was understaffed.[9] Since taking over the University's dispatching, however, the City has added only one additional staff member, but emergency calls have increased significantly.

(c) Various recommendations flowing from the study have not been implemented: there is no pool of trained part-time dispatchers; police vehicles have not been equipped with mobile data computers; the dispatch center still looks onto the City Hall's lobby; while the City has implemented an automated telephone system, callers opting out of the system are directed to the dispatch center.[10]

(d) In summary, the dispatchers' workloads have increased since the last contract, but their wages still lag behind those of dispatchers in comparable communities.

(6) The dispatchers' proposal regarding the Data Entry/Dispatcher Position is preferable to the City proposed creation of a new position.

(a) Linda McVey, the incumbent data entry/dispatcher, making $10.67 per hour, is actually assigned dispatcher duties for 42% of her work time, during which time she performs the same high-stress dispatch work as those currently making $11.75 per hour.[11]

(b) There is no logical or equitable reason why employees should get paid differently for doing the same work, but the City wants to create a new position of records/communications coordinator and pay one dispatcher more than the others, further stratifying the bargaining unit.

(c) The City made no showing that a new classification was necessary, and there was no evidence that it would perform some functions not currently performed by one or more members of the bargaining unit.

(d) The curious aspect of the City's offer is that it will cost more to *stratify* the bargaining unit as it proposes, than to *equalize* the bargaining unit as proposed by the Union.

On the above bases, the Union submits that its final offer is more reasonable than that of the City and urges it should be selected by the Arbitrator.

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[9] Citing the contents of Union Exhibit #22 at page 22.

[10] Citing the contents of Union Exhibit #15 at page 44.

[11] Citing the contents of Union Exhibit #17.

POSITION OF THE EMPLOYER

In support of its contention that its is the more appropriate of the two final offers in these proceedings, the City emphasized the following principal considerations and arguments.

(1) That the weight of arbitral authority suggests that *the internal comparison criterion* should be given significant import, particularly where, as here, all such comparisons favor the position of the City.

(a) Each Union representing City of Whitewater employees was faced with the prospect of converting from a conventional health insurance plane to the State Plan.

(b) In *the Police settlement*, the Union agreed to the insurance change in return for the insurance supplement and the City's participation in the Income Continuation Program.[12] The settlement also included the following changes: the uniform allowance had a modest increase; a two tier vacation program was agreed upon with reduced benefits for new hires; and those in the bargaining unit received 3.5% across the board wage increases in each year.

(c) In the *Department of Public Works settlement*, the employees received the same insurance deal as the police, with yearly, across the board, split wage increases of 3%-1% and 3%-1.5%, with the second increases effective in September of each year.[13]

(d) *Non-represented employees* received 3.5% each year and were also given the State Plan insurance, along with a "supplemental buy-out."[14]

(e) A proposed settlement in *the Clerical Unit* (which awaits decision), would treat the employees in the same manner as the non-represented employees.

(f) If the Union offer is accepted in these proceedings, those in the bargaining unit would receive wage increases significantly larger than any other unit of City employees; the Union offers no justification for its proposed singular treatment of those in the bargaining unit.

(g) If the role of the Arbitrator is to place the parties into the position they would have reached through a voluntary settlement, the following internal comparisons of cost and lift support the position of the City:

	Cost	**Lift**
Police	7.12%	7.12%
DPW	6.84%	8.5%
Clerical (City)	8.16%	8.16%
Dispatch (Union)	10.15%	10.25%

[12] Citing the contents of City Exhibit III(A).

[13] Citing the contents of City Exhibit III(B).

[14] Citing the contents of City Exhibits III(D), (E) and (F).

(2) Relative to the Unions "*quid pro quo*" argument, each of the large units accepted the City's offer on health insurance and viewed the offer as providing sufficient incentive to justify the change.

(a) The new health insurance plant benefits are superior to those in the standard indemnity plan; the new plan, for example, eliminates the previous 200/600 deductibles.[15]

(b) While the HMO format eliminates some individual choice, it is the wage of the future, and the employees have the choice of three plans to which they will not be required to contribute and three plans with some employee contribution requirements.

(c) Conversion to the State Plan is neither an *onerous burden* nor worthy of a huge *quid pro quo*.

(3) *Cost of living considerations* absolutely favor arbitral selection of the final offer of the City.

(4) Arbitral consideration of the *eight external comparables* favors selection of the final offer of the City.[16]

(a) While both parties have agreed to the so-called "Tyson" *external comparables*, the Union has inexplicably excluded two of the eight comparables.

(b) The City's exhibits show, over the course of two years, that those in the bargaining unit will move from fifth to fourth at the 3-year mark, and fourth to third at the 6-year mark, when longevity pay is factored in.

(c) Only Oconomowoc offered its employees a more cost wage increase package.

(d) While Watertown and Lake Geneva offered their employees a comparable "lift", they did so at a much lower cost.

(e) The City's offer is fair, it improves the employees' overall ranking, and it is consistent with the external comparables.

(5) While costing-in benefits can be illusory, the City's longevity benefit is so high versus the comparables, that it simply cannot be discounted.

(6) The *long term duration of employment* in the bargaining unit indicates little dissatisfaction with working conditions. This is particularly significant because, unlike police officers, dispatchers can more with relative ease to other local police departments or county sheriff's departments.

(7) Various of the Union's exhibits are defective.

(a) Realizing that *internal comparisons*, *cost of living* and *area settlements* do not support its position, it has placed its faith on Union Exhibit #8. While this document purports to

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[15] Citing the contents of Union Exhibit #2.

[16] Citing the contents of City Exhibit VI(A).

show that the City of Whitewater is the lowest paying employer among six of the eight comparables, it excludes Jefferson and Elkhorn, two communities previously included in the pool of eight external comparables.

(b) The comparison methodology used by the Union distorts the true picture.

(i) It is not unusual to have a group of dispatchers and one individual who serves as the *chief dispatcher*.

(ii) The Union has used the *chief dispatcher* rates for Lake Geneva and Delevan as the "top" dispatcher wage rate, even though Oconomowoc, Burlington, Watertown and Fort Atkinson do not utilize such a position.

(iii) As indicated in the testimony of Ms. Lentz, the "Records Communications Coordinator" is the City's bargaining unit equivalent of a *chief dispatcher*; the City proposed rates for this position are $13.62 in 1998 (+4% over 1997) and $14.17 in 1999 (+4% over 1998). If these numbers had been inserted into Union Exhibit #8, Whitewater would move to third in 1998 and 1999.

(iv) A similar distortion exists in the start rate comparisons utilized by the Union, wherein it used the pay rate for the *data entry/dispatcher* rather than the *dispatcher classification*; the data entry position is conceded to be a clerical position, which should not be compared to the *dispatcher starting rates* among the external comparables. It urges that City Exhibit VI(b) contains the correct starting rate comparisons.

(c) There is no basis for disregarding Elkhorn and Jefferson from the external comparison pool.

(i) While their levels of calls may be different or lower, this does not mean that they work less hard that Whitewater's dispatch staff.

(ii) While the two communities are smaller than Whitewater, equally compelling arguments could be made for the exclusion of Oconomowoc, which is subject to suburban Milwaukee wage pressures, and Watertown, which is almost double the size of Whitewater and which has no student population.

(iii) The City is prepared to live with all eight of the employees in the previously establish external comparison pool, and the Union should also be required to do so.

(d) On the above described bases, Union Exhibit #8 should be disregarded in these proceedings.

(8) That *quid pro quo considerations* favor selection of the final offer of the Employer in these proceedings.

(a) Unlike the usual interest arbitration circumstances where one party is seeking a significant change in the status quo ante and the other party is opposed, the Union has agreed to the proposed change and has accepted the benefits offered to the other unions which voluntarily accepted the change in health insurance benefits.

(b) The lack of any bases for *an enhanced quid pro quo* is apparent from the following considerations: there is nothing in the record to indicate that the change in health carriers is significant; the City is offering the State plan which includes three different HMOs with no employee contribution to the benefits; the coverage under the State plan is superior to the Wausau plan currently in place in Whitewater, as is apparent from its elimination of the $200 and $600 deductibles[17]; the Union's arguments based upon the reputations of HMOs must be considered in light of the fact that it has accepted the plan as offered; the City has included a generous insurance buyout plan and paid income continuance under the State Plan, and it has offered a $1.50 per hour increase for the employee who currently functions as the Records/Communications Coordinator.

(c) The record simply does not support an arbitral determination that the minor change from a conventional health plan to an HMO warrants the *extraordinary quid pro quo* contemplated by the Union.

On the basis of all of the above, the City submits that its final offer is more reasonable than that of the Union, and that it should be selected by the Arbitrator.

FINDINGS AND CONCLUSIONS

While more than one impasse item remains, the parties principally disagree relative to the number and size of deferred wage increases to be implemented during the life of the two year renewal labor agreement, and the disposition of this impasse item is determinative in these proceedings. In arguing their respective cases, the parties urge arbitral consideration and application of the following statutory criteria referenced in Section 111.70(4)(cm)(7)(d), (e), (g), (h) and (j): *external comparisons* with comparable public sector employers; *internal comparisons* with other represented and non-represented City of Whitewater employees; *cost of living* considerations; certain *overall level of compensation* considerations; the significance of the *negotiated change in the status quo ante* in the area of employee health insurance; and the significance of *alleged changes in job content* within the Dispatcher Classification, since the parties' last went to the bargaining table.

Prior to individually addressing the above criteria and reaching a decision and rendering an award in these proceedings, the undersigned will

[17] Citing the contents of Union Exhibit #2.

offer certain preliminary observations relating to *the nature of the Wisconsin interest arbitration process*.

The Wisconsin Interest Arbitration Process

As has been emphasized by the undersigned in many prior Wisconsin arbitration proceedings, an interest arbitrator operates as *an extension of the parties normal collective bargaining process*, and his or her normal role is to attempt to place the parties into the same position they would have occupied but for their inability to agree at the bargaining table. In so doing, the arbitrator will closely consider the parties' *past practices* and their *negotiations history*, which criteria fall within the scope of Section 111.70(4)(cm)(7)(j) of the Wisconsin Statutes), in considering and applying the various other statutory criteria. This principle is described as follows in the frequently cited book originally authored by Elkouri and Elkouri:

> "**Arbitrator's Function in Interest Disputes**
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> "While various authorities have expressed generally similar views about the arbitrator's function in interest disputes, there are nuances that are worth of note and that are illustrated by the comments quoted below.
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> In a definite sense the function of an interest arbitrator is to legislate for the parties. As explained by Arbitrator Emanuel Stein:
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> > The task is more nearly legislative than judicial. The answers are not to be found within the 'four corners' of a pre-existing document which the parties have agreed shall govern their relationship. Lacking guidance of such a document which confines and limits the authority of arbitrators to a determination of what the parties had agreed to when they drew up their basic agreement, our task here is to search for what would be, in the light of all the relevant factors and circumstances, a fair and equitable answer to a problem which the parties have not bee able to resolve by themselves.
>
> In a similar sense, the function of the interest arbitrator is to supplement the collective bargaining process by doing the bargaining for both parties after they have failed to reach agreement through their own bargaining efforts. Possibly the responsibility of the Arbitrator is best understood when viewed in that light. This responsibility and the attitude of humility that appropriately accompanies it have been described by one arbitration board speaking through its chairman, Whitley P. McCoy:
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> > Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination, upon consideration of policy, fairness, and expediency, of what the contract rights ought to be. In submitting their case to arbitration, the parties have merely extended their negotiations - they have left to this Board to determine what they should in negotiations, have agreed upon. We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men have agreed to? ...We do not

> conceive it to be our function to impose on the parties contract terms merely because they embody our own individual economic or social theories. To repeat, out endeavor will be to decide the issues as, upon the evidence, we think reasonable negotiators, regardless of their social or economic theories might have decided them in the give and take of bargaining..."[18]

In applying the above described principles where one of the parties' is asking the arbitrator to reach a decision which is inconsistent with the parties' bargaining history, it must generally establish a very persuasive case for such a change in the *negotiated status quo ante*, generally in the form of establishing, ***first***, that *a legitimate problem exists which requires attention*, ***second***, that *the proposed change reasonably addresses the problem*, and, ***third***, that *an appropriate quid pro quo has been provided to justify the change*. The rationale for the latter requirement is that neither party should achieve the elimination of or a substantial change in a previously negotiated policy or benefit, without having advanced something equivalent to what would have been required at the bargaining table. Since the parties have already agreed to the City proposed changes in health insurance, only the extent of the *quid pro quo* requirement remains in issue in these proceedings.

The External Comparison Criterion

It is widely recognized that one of the most persuasive and the most frequently cited criterion in interest disputes is *prevailing practice*, as reflected in consideration of similarly situated external comparables. This principle has been repeatedly recognized by Wisconsin interest arbitrators, and is well described in the following additional excerpt from the Elkouris' book:

"Prevailing Practice - Industry, Area, Industry-Area

> Without question the most extensively used standard in interest arbitration is 'prevailing practice'. This standard is applied with varying degrees of emphasis, in most interest cases. In a sense when this standard is applied the result is that disputants indirectly adopt the end results of the successful collective bargaining of other parties similarly situated. The arbitrator is the agent through whom the outside bargain is indirectly adopted by the parties."[19]

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[18] Volz, Marlin M. and Edward P. Goggin, Co-Editors, *Elkouri & Elkouri* How Arbitration Works, Bureau of National Affairs, Fifth Edition - 1997, pages 134-135. (footnotes omitted)

[19] *Elkouri & Elkouri* How Arbitration Works, page 1106.

Wisconsin interest neutrals normally utilize and defer to the parties' *bargaining history* in determining the composition of the *external comparison group*.[20] In operating as an extension of the parties' bargaining process, therefore, the role of the undersigned is to resolve the impasse before him, not to redefine or reconstitute the parties' normal external comparisons, and/or to otherwise casually alter bargaining criteria historically utilized by them in the past. These well established principles have frequently been recognized by the undersigned in the past, and they are well addressed in the following excerpt from the still authoritative book by Irving Bernstein:

> "The last of the factors related to the worker is wage history. Judged by the behavior of arbitrators, it is the most significant consideration in administering the intraindustry comparison, since the past wage relationship is commonly used to test the validity of other qualifications. The logic of this position is clear: the ultimate purpose of the arbitrator is to fix wages, not to define the industry, change the method of wage payment, and so on. If he discovers that the parties have historically based wage changes on just this kind of comparison, there is virtually nothing to dissuade him from doing so again...."[21]

The following additional excerpt from Elkouri and Elkouri also emphasize the importance of historical comparisons and the methodology used to ensure wage comparison validity.

> "...Arbitrators frequently use for the comparison the prevailing practice of the particular industry (or public sector occupational group) in question, as opposed to industry in general.
>
> Where each of various comparisons had some validity, an arbitrator concluded that he should give the greatest weight to those comparisons that the parties themselves had considered significant in free collective bargaining, especially in the recent past.
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> The selection of the employers whose practices are to determine the standard must, in wage cases, be followed by an analysis of jobs for comparability. Mere job titles often are not reliable and are by no means conclusive. It is incumbent upon the parties to supply reliable job descriptions in order to establish a basis for comparison.[22]

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[20] This group is typically referred to as the *primary intraindustry comparison group* in private sector interest disputes, and the same terminology is also sometimes utilized in public sector interest arbitrations.

[21] Bernstein, Irving, The Arbitration of Wages, University of California Press (Berkeley and California), 1954, page 66. (footnotes omitted)

[22] *Elkouri & Elkouri* How Arbitration Works, page 1113. (footnotes omitted)

Both the City and the Union professed to accept the eight cities constituting the *external comparison group* as originally established in a prior interest arbitration proceeding (i.e., the cities of Oconomowoc, Watertown, Burlington, Fort Atkinson, Lake Geneva, Delevan, Elkhorn and Jefferson).[23] In its post hearing brief, however, the Union urges arbitral disregard of wage comparisons with the Cities of Elkhorn and Jefferson in these proceedings, because they do not provide 911 emergency services; since they are not public safety answering points (PSAPS), urges the Union, they are not routing points for emergency calls in their geographic areas, their dispatchers do not handle the same level and intensity of emergency calls, and their jobs are thus not comparable. The Company submits that the Elkhorn and Jefferson employees in the external comparison group are performing *normal dispatching duties*, urges that there is nothing in the record to suggest that they work less hard than those in the bargaining unit, and suggests that the apparent purpose behind their proposed exclusion by the Union is to remove two lower paying comparables from the external comparison group.

Without unnecessary elaboration, the undersigned will reemphasize that at the arbitral hearing and in their post hearing briefs the parties' each stated their agreement with the preexisting composition of the external comparison group. The Union's arguments to forego wage comparisons with the Elkhorn and Jefferson dispatchers in these proceedings, which were first advanced in its post-hearing brief, fall far short of establishing the requisite *very persuasive basis* for modifying the parties' historic external comparison group. Accordingly, the Arbitrator has preliminarily concluded that the historical external comparison group should remain unchanged, and should thus continue to include the Cities of Elkhorn and Jefferson.

What next of the City's arguments that the wage comparison data cited in Union Exhibit #8 are also faulty or incomplete in at least three other

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[23] See the decision of *Arbitrator Richard Tyson* in City of Whitewater, Decision No. 28710, page 11 (1997), a copy of which comprises City Exhibit IV. While the Arbitrator addressed *primary comparison* consideration to Watertown, Fort Atkinson, Oconomowoc and Burlington, and *some consideration* to Delavan, Elkhorn, Jefferson and Lake Geneva, the parties did not emphasize this distinction in these proceedings.

respects? *First*, they treat the "*chief dispatcher*" rates paid in the cities of Lake Geneva and Delevan as the "*top rate*" paid for dispatchers, thus distorting the resulting wage comparisons; *second*, they fail to account for the fact that Whitewater's "*Records Communication Coordinator*" is the equivalent of a "*chief dispatcher*" and that the City's final offer proposes 4% increases for this position each year to the levels of $13.10 and $14.17 per hour in 1998 and 1999; and, *third*, they treat the pay rate for Whitewater's *Data Entry/Dispatcher*, a clerical position, as the starting rate for the *Dispatcher classification*.

As referenced above, wage surveys of external comparables for the purpose of determining comparability, must be based upon *classifications with similar job contents*. In applying this principle to the dispute at hand it must be recognized that where certain classifications either perform leadership duties in additional to dispatch functions or are otherwise significantly functionally distinct, they should not be directly compared with normal dispatching classifications, because of such dissimilarities in job responsibilities and/or content. In addressing these considerations, the undersigned finds the following considerations to be determinative:

(1) City Exhibits VII(E) and (F) clearly indicate separate classifications and wage rates for the *Senior Dispatcher* in Lake Geneva, which position receives an additional 45 cents per hour over the dispatcher classification, and for the *Chief Dispatcher* in Delevan which has a separate rate range, $1.04 per hour higher at the bottom and $1.12 per hour higher at the top, versus the dispatcher classification.

(2) Testimony in the record establishes that the *Records/Communication Coordinator* classification in Whitewater is equivalent to a chief dispatcher position, and thus distinguishable from the *Dispatcher classification*.

(3) Article 30 of the prior agreement, a copy of which comprises City Exhibit II(D), clearly distinguishes between the *Dispatcher* and the *Data Entry/Dispatcher*, with the negotiated pay rates for the latter classification more than $1.00 per hour lower than for the *Dispatcher*.

On the above described bases it is quite clear that the various *chief dispatcher classifications* and the *Data Entry/Dispatcher* classification are separate and distinct from one another, that they have significantly different hourly wage rates, and, accordingly, that they should not be used in generating wage comparison data for the various dispatcher classifications

utilized by the external comparison group.

For the reasons described above, the Arbitrator finds the most valuable external comparison data to be that included in City Exhibits VI(A) and (B).

(1) City Exhibit VI(A) compares the 1998 and 1999 wage settlements within the *external comparison group* and, when the data is averaged, it indicates as follows:

(a) The *Union has proposed* actual wage increases costing 4.5% for each of the two years and, due the proposed split increases, has proposed yearly wage lifts of 5.5% for each of the two years.

(b) The *City has proposed* full year actual wage increases of 4.0% for each of the two years, which also provides 4.0% wage lifts for each of the two years.

(c) Excluding Elkhorn from *1998 comparisons*, the remaining seven employers in the external comparison group, provide average wage increases of approximately 3.39%, and average wage lifts approximating 3.68%

(d) The *1999 comparisons* for all eight employers in the external comparison group, indicate average wage increases of approximately 3.17%, and average wage lifts approximating 3.39%.

The above referenced data indicate that the final offers of both parties exceed the *average yearly percentage wage increases* within the external comparison group, whether measured in terms of average yearly costs or average yearly wage lift. The data is particularly significant in the fact that the average two year lift among the comparables is approximately 7.07%, versus the 8% proposed by the Employer and 11% proposed by the Union.

(2) City Exhibit VI(B) compares the 1998 and 1999 hourly rates of pay for dispatchers within the *external comparison group*, at their *start*, at *18-24 months* and at *3 years*, with the following results:

(a) The *1998 average hourly wages* at *start* approximate $10.05, at *18-24 months* approximate $11.67, and at *3 years* approximate $11.93. The *Employer proposed 1998 wages* at the same three levels would be approximately $1.11 per hour, $.55 per hour and $.29 per hour above the averages of the comparables; the *Union proposed 1998 wages* at the same three levels would be $1.28 per hour, $.73 per hour and $.47 per hour above the averages of the comparables.

(b) The *1999 average hourly wages* at *start* approximate $10.91, at *18-24 months* approximate $12.06, and at *3 years* approximate $12.36. The *Employer proposed 1999 wages* at the same three levels would be approximately $1.16 per hour, $.65 per hour and $.35 per hour above the averages of the comparables; the *Union proposed 1999 wages* at the same three levels would be $1.53, $1.03 and $.73 above the averages of the comparables.

The above referenced data clearly indicates that the 1998 and 1999 *hourly pay rates* proposed by each of the two parties exceed the average hourly pay rates within the external comparison group, and that *both final offers would at least somewhat increase the dollar amounts of such excesses from 1998 to 1999.*

The information contained in the two exhibits discussed above, clearly indicates that both parties are proposing above average wage increases for both 1998 and 1999, which proposed increases support an arbitral inference that both have thus addressed so-called *quid pro quo considerations* flowing from the negotiated changes in medical insurance. This external comparison data does not, however, indicate to the undersigned what would constitute an appropriate *quid pro quo* for the negotiated changes in employee medical insurance.

The Internal Comparisons

While the external rather than internal comparisons may be more persuasive to arbitrators in dealing strictly with wage levels, the reverse is frequently true in dealing with certain types of fringe benefits, particularly health insurance. This principle and its underlying bases are well described in the following additional excerpts from the Elkouris' book:

> "...Applying the internal-comparison standard to determine the appropriate health insurance package, Arbitrator Mario F. Bognanno explained:
>
> > [B]ecause of risk pooling, economies of scale and the lack of quality data about the coverage, contribution levels and the costs of health insurance benefits to external communities, most Arbitrators give heavy weight to evidence about the instant Employer's structure of health insurance coverage/contributions as opposed to what external practices are in these areas. Clearly, one cannot expect the Employer to offer a different health insurance package to each of the different work groups. By pooling risk and by 'spreading' costs, the individual Employer can buy insurance protection at a far more reasonable price. Hence, in the health area the comparison focus shifts from the 'external' to the 'internal.' This conclusion applies to dental insurance as well.
>
> In another instance, where the dominating issue was an Association's request for paid health insurance for retirees, Arbitrator Zel S. Rice II found that the favored position of the internal comparables was not to provide such insurance, whereas the external comparables favored the position of the association. In agreeing with the employer's position, he found that the 'internal comparables reveal that the Employer's other employees would not be getting equity if the arbitrator granted the Association's request for paid health insurance for retirees.'[24]

In applying the above described principles to the dispute at hand it is noted that parties' agreement to changes in health insurance was apparently based upon their recognition of the considerations appropriately described by

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[24] *Elkouri & Elkouri* How Arbitration Works, pages 1111-1112. (footnotes omitted)

Arbitrator Bognanno above. Of significant importance in these proceedings is the level of the so-called *quid pro quo* agreed upon by the parties in other City of Whitewater bargaining units, all of which agreed to the same changes in employee medical insurance coverage agreement upon by the parties in these proceedings.

(1) In their two year renewal labor agreement covering the Police Department bargaining unit, *the City and the Wisconsin Professional Police Association* agreed to 3.5% wage increases in both 1998 and 1999.[25]

(2) In their two year renewal labor agreement covering the DPW bargaining unit, *the City and the American Federation of State, County and Municipal Employees* agreed to 3.0% and 1.0% split wage increases in 1998, and to 3.0% and 1.5% split wage increases in 1999.[26]

(3) In their two year renewal labor agreement covering a Clerical bargaining unit, *the City and the Internal Brotherhood of Teamsters*, the City proposes 4.0% wage increases in both 1998 and 1999, the same deferred wage increased proposed by it in these proceedings.[27]

(4) The record indicates that the yearly wage increases accorded *non-represented employees* were somewhat less than those negotiated with the various Unions.[28]

The settlements within the Police and the DPW bargaining units, which resulted from the give and take of bargaining between the City and two large and highly professional labor organizations, are very persuasive to the undersigned in *attempting to put the parties into the same position they would have reached had they been able to achieve a full renewal agreement at the bargaining table*. The City's final offer in the pending arbitration covering the clerical bargaining unit, and in its actions in adopting deferred 1989 and 1990 wage increases for non-represented employees, also support an arbitral finding that it has attempted to treat all employees affected by the change in medical insurance, on even-handed and otherwise reasonable bases.

While the Union urges that no significant weight should attach to the internal comparisons on the *quid pro quo* question because of the lack of

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[25] See the contents of City Exhibit III(A).

[26] See the contents of City Exhibit III(B).

[27] See the contents of City Exhibit III(C).

[28] See the contents of City Exhibits III(D) and (E).

fringe benefits parity among the various units, this argument is simply not persuasive in the dispute at hand; these proceedings are not an appropriate vehicle to address alleged negotiated fringe benefit inconsistencies among the various bargaining units within the City. Despite the urging of Union to minimize the importance of internal comparables in making *quid pro quo* determinations, any concessions made within other units based upon their acceptance of the City proposed health care changes are *persuasive evidence* of the adequacy of similar concessions in these proceedings.

On the above described bases, the undersigned has preliminarily concluded that the internal comparison criterion persuasively favors the selection of the final offer of the Employer in these proceedings.

The Overall Level of Compensation Criterion

While the City based a number of its arguments on the apparently excellent longevity benefits enjoyed by those in the bargaining unit, the *overall level of compensation criterion* is most persuasive when is accompanied by evidence of the entire range of wages and fringes covering employees, including any history of the give and take of past bargaining which led to the overall benefits structure. The evidence of record in these proceedings is simply insufficient to justify significant weight being placed on this arbitral criteria in the final offer selection process.

The Cost of Living Criterion

In this area it is clear that the wage increase offers of each of the parties exceed recent increases in cost of living and, accordingly, arbitral selection of the lower of the two final wage offers would normally be favored. Since arbitral selection of a final offer on the basis of either *quid pro quo* or *productivity considerations* would not normally be limited by cost of living considerations, however, this criterion cannot be assigned significant or determinative weight in the final offer selection process.

Workload/Productivity Considerations

What next of the Union's argument that the assumption of various University of Wisconsin-Whitewater dispatching duties have significantly increased the workload of those in the bargaining unit since that last time that the parties went to the bargaining table, and, accordingly, that a higher

than normal wage increase is thus justified? While arguments relative to bargaining unit productivity are not rare in the interest arbitration process, as described below, various practical considerations have prevented it from being assigned significant weight.

> "Numerous reasons exist for the refusal of arbitrators to make productivity a decisive factor in wage determination. the rate of change in productivity varies from firm to firm and even from department to department within a plant. Thus, exclusive use of the productivity standard for wage adjustments would soon lead to a chaotic wage structure within a single plant or industry. Moreover the measurement of productivity presents highly difficult problems of economic analysis and statistical measurement... The arbitrator must also face the problem of assigning a value to the change in productivity - evidence of changes in productivity is not readily transformed into cents-per-hour wage adjustments."[29]
>
> "From the standpoint of wage determination, the productivity concept is applied to two quite different factors: first, greater output resulting from more intensive effort by the worker and, second, higher output stemming from general economic and social forces. the origin of the former is in the individual; he works harder, faster, more skillfully. The latter is beyond his control since its sources are the broad determinants of a progressive economy.
>
> * * * * *
>
> One may conclude that productivity as a wage-determining standard leaves something to be desired on grounds of precision...
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> * * * * *
>
> This arbitral abstemiousness stems from the unusual difficulties that obstruct the application of this criterion to the cases. The statistical manipulations that go on, though impressive for their quantity and ingenuity, are not marked for their translatability into cents per hour.
>
> * * * * *
>
> In conclusion, the productivity criterion, despite the interest it has evoked, has played a subordinate role in wage arbitration. This is not because the factor is unrelated to wage determination; in fact, it is the underlying cause of real wage advance, of the long-term rise in the standard of life of the American people. Rather, this neglect stems primarily from the extraordinary measurement difficulties that confront the parties and the arbitrator in applying productivity to the particular wage dispute."[30]

In applying the above principles to the dispute at hand, it is clear that the testimony in the record relating to the alleged increases in workload/productivity is anecdotal, it simply does not lend itself to either

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[29] *Elkouri & Elkouri* How Arbitration Works, page 1135. (footnotes omitted)

[30] The Arbitration of Wages, pages 96, 98 and 100. (footnotes omitted)

precise measurement or to translation into cents per hour; further, it is noted that there is no evidence in the record addressing comparable work loads within the external comparison group. On these bases, the undersigned has preliminarily concluded that the evidence in the record relating to alleged productivity changes in the bargaining unit cannot be assigned significant or determinative weight in these proceedings.

The Remaining Impasse Items

As indicated earlier, arbitral disposition of the dispute over the size and the number of the overall deferred wage increases during the term of the renewal labor agreement is determinative in these proceedings, despite minor remaining impasse items which were neither strongly emphasized nor treated as determinative by the parties.

Summary of Preliminary Conclusions

As addressed in greater detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions.

(1) The primary focus of a Wisconsin interest arbitrator is to attempt to put the parties into the same position they would have occupied but for their inability to achieve a complete settlement at the bargaining table.

   (a) The parties principally disagree relative to the number and size of deferred wage increases to be implemented during the life of the two year renewal labor agreement, incidental to which they urge arbitral consideration and application of the following statutory criteria referenced in Section 111.70(4)(cm)(7)(d), (e), (g), (h) and (j): *external comparisons*; *internal comparisons*; *cost of living*; *overall level of compensation* considerations; *negotiated change in the status quo ante*; and *alleged changes in work load* since the parties' last went to the bargaining table.

   (b) When one of the parties' is asking the arbitrator to reach a decision which is inconsistent with the parties' bargaining history, it must generally establish a very persuasive case for such a change in the *negotiated status quo ante*, generally in the form of establishing, ***first***, that *a legitimate problem exists which requires attention*, ***second***, that *the proposed change reasonably addresses the problem*, and, ***third***, that *an appropriate quid pro quo has been provided to justify the change*. Since the parties have already agreed to the City proposed changes in health insurance, only the extent of the *quid pro quo* requirement remains in issue in these proceedings.

(2) Arbitral consideration of the *external comparison criterion* indicates that both parties are proposing above average wage increases for both 1998 and 1999, and both have thus addressed so-called *quid pro quo considerations* flowing from the negotiated changes in medical insurance. This external comparison data does not, however, indicate to the undersigned what would constitute an

appropriate *quid pro quo* for the negotiated changes in employee medical insurance.

(3) Arbitral consideration of the *internal comparison criterion* persuasively favors the selection of the final offer of the Employer in these proceedings.

(4) The evidence of record in these proceedings is insufficient to justify significant weight being placed on the *overall level of compensation criterion* in these proceedings.

(5) The *cost of living criterion* cannot be assigned significant or determinative weight in these proceedings.

(6) The evidence in the record relating to alleged *productivity changes in the bargaining unit* cannot be assigned significant or determinative weight in these proceedings.

(7) Arbitral disposition of the dispute over the *size and the number of the overall deferred wage increases* during the term of the renewal labor agreement is determinative in these proceedings.

Selection of Final Offer

Based upon a careful consideration of the entire record in these proceedings, including arbitral consideration of all of the statutory criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes in addition to those elaborated upon above, the Impartial Arbitrator has preliminarily concluded that the final offer of the City of Whitewater is the more appropriate of the two final offers, and it will be ordered implemented by the parties.[31]

[31] This conclusion includes an arbitral determination that the City proposed addition of the *Records/Communication Coordinator classification* at a an initial wage rate of $13.10, plus 4% wage increases on January 1, 1998 and January 1, 1999, is consistent with the evidentiary record and the application of the various statutory criteria.

AWARD

Based upon a careful consideration of all of the evidence and arguments, and a review of all of the various arbitral criteria provided in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the City of Whitewater is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the final offer of the City, hereby incorporated by reference into this award, is ordered implemented by the parties.

WILLIAM W. PETRIE
Impartial Arbitrator

October 29, 1999