

ARBITRATION OPINION AND AWARD

In the Matter of Arbitration)	
)	
Between)	
)	
CITY OF SCHOFIELD, WISCONSIN)	CASE 1
)	NO. 55620
And)	INT/ARB 8265
)	Decision No. 29505-A
TEAMSTERS LOCAL UNION #662)	
_____)	

Impartial Arbitrator

William W. Petrie
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Hearing Held

Schofield, Wisconsin
May 24, 1999

Appearances

For the City

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For the Union

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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the City of Schofield, Wisconsin and Teamsters Local Union #662, with various impasse items remaining in dispute after the parties' preliminary negotiations on their initial labor agreement. After the parties had met on numerous occasions without arriving at complete agreement, the City filed a petition requesting the Commission to initiate arbitration pursuant to Section 111.70(4)(cm)(7) of the Wisconsin Statutes. After preliminary investigation by a member of its staff, the Commission on December 10, 1998 issued an order requiring arbitration, and on December 30, 1998 it appointed the undersigned to hear and decide the matter.

An interest arbitration hearing took place in Schofield, Wisconsin on May 24, 1999, at which time both parties received full opportunities to present evidence and argument in support of their respective positions, and each thereafter closed with the submission of post-hearing briefs and reply briefs, the last of which was received by the Arbitrator on October 12, 1999.

THE FINAL OFFERS OF THE PARTIES

The parties made substantial progress in their preliminary negotiations, and the only remaining areas of disagreement are the following: the *duration of the agreement*; the *Employer pension benefit contributions* for those in the bargaining unit; and contract language relating to a so-called *just cause provision* to be contained in the agreement.¹ The respective final offers of the parties, hereby incorporated by reference into this decision, provide principally as follows:

- (1) *The Employer proposes* a three year labor agreement covering calendar years 1997, 1998 and 1999, containing the following summarized proposals on the impasse items:
 - (a) An article entitled **DISCHARGE AND DISCIPLINE**, providing as follows:
 - "A. Employees shall not be disciplined, suspended or discharged without just cause. In the case of a suspension or discharge, the employee and the Union shall be notified

¹ While the *wages* and the *health insurance* proposals of the parties are identical for the first two years of the labor agreement, the City's final offer proposes both a *wage increase* and an *increase in its health insurance contribution* during the third year of its proposed three year agreement.

within twenty-four (24) hours of the suspension or the discharge and the reasons therefore.

B. Any employee desiring an investigation of his/her discharge, suspension or warning must file his/her protest in writing with the Employer and the Union within five (5) working days, exclusive of Sundays and holidays, of the date the employee receives discharge or warning notice. The discharge, suspension or warning notice shall then be discussed by the Employer and the Union as to the merits of the case. Should it be found that the employee has been unjustly discharged or suspended, he/she shall be reinstated and compensated for all time lost at his/her regular rate of pay plus such overtime as he/she may have worked.

C. The employee may be reinstated under other conditions agreed upon by the Employer and the Union. Failure to agree shall be cause for the issue to be submitted to arbitration as provided for in this Agreement."

(b) An article entitled **PENSIONS**, providing as follows:

"Effective 1/1/99 or the first pay period after the ratification of the initial collective bargaining agreement between the City and the Union, whichever is later, the City shall begin to contribute twelve percent (12%) of the employees' gross wages to a Sec. 457 deferred compensation plan made available to the employees by the City."

(c) Appendix "A", a **WAGE SCALE** providing as follows:

	Hourly Rate	Hourly Rate	Hourly Rate
		Eff. 1/1/97	Eff. 1/1/98
Eff. 1/1/99			
Municipal Clerk	\$9.96	\$10.23	\$10.51
Administrative Asst.	\$7.45	\$7.65	\$7.86

New hires shall work at 90 percent (90%) of the contract rate during their probationary period.

The hourly rates effective 1/1/99 shall be increased fifty-six cents (56¢) per hour effective the same pay period the Employer begins making the twelve percent (12%) contribution to a tax-deferred annuity program on behalf of the employees.

(2) *The Union proposes* a two year labor agreement covering calendar years 1997 and 1998, containing the following summarized proposals on the impasse items:

(a) An article entitled **DISCHARGE**, providing as follows:

"SECTION 1. No employee who has completed his/her probationary period shall be discharged or suspended without just cause and without one (1) warning notice of the complaint in writing to the employee with a copy to the Union and steward, except no warning notice is required for discharge due to dishonesty, being under the influence of intoxicating beverages while on duty, carrying unauthorized passengers in a company vehicle, recklessness resulting in a chargeable accident while on duty, or other flagrant violations.

Warning notice to be effective for not more than one hundred-eighty (180) days from date of notice.

Discharge or suspension shall be in writing with a copy to the Union and the employee affected.

SECTION 2. Any employee desiring an investigation of his/her discharge, suspension or warning must file his/her protest in writing with the Employer and the Union within five (5) working days, exclusive of Sundays and holidays, of the date the employee received such discharge or warning notice. The discharge, suspension or warning notice shall then be discussed by the Employer and the Union as to the merits of the case. Should it be found that the employee has been unjustly discharged or suspended, he/she shall be reinstated and compensated for all time lost at his/her regular rate of pay plus such overtime as he/she may have worked.

SECTION 3. The employee may be reinstated under other conditions agreed upon by the Employer and the Union. Failure to agree shall be cause for the issue to be submitted to arbitration as provided for in Article 8 of this Agreement."

(b) An article entitled **PENSIONS**, providing as follows:

"Effective January 1, 1997, the Employer shall pay into the City of Schofield Deferred Compensation Program 457 seventy nine dollars (\$79.00) per week for all regular employees covered by this agreement.

For regular part-time employees this amount would be pro-rated based on hours worked.

Effective January 1, 1998, this amount will be increased to \$83.00 per week."

(c) Appendix A, a **WAGE SCHEDULE** providing as follows:

	"1/1/97	1/1/98
Municipal Clerk	3% increase \$9.96 per hr.	2.75% increase \$10.23 per hr.
Administrative Assist.	3% increase \$7.45 per hour	2.75% increase \$7.65 per hr.

New hires shall work at ninety percent (90%) of the contract rate during their probationary period."

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 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. 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 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 CITY

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

- (1) The City proposed pool of external comparables should be relied upon by the Arbitrator as the most appropriate in this dispute.
 - (a) The parties have never before proceeded to interest arbitration, no pool of "comparable communities" has previously been established, the comparable pool selected in these proceedings will undoubtedly become the standard in future negotiations/interest arbitrations, and its selection in these proceeding is of vital importance to both parties.
 - (i) The selection of the pool of external comparables is unique in these proceedings, in that the City of Schofield is one of many small suburbs near the much larger City of Wausau, and the unit consists of only one full-time and one part-time employee.
 - (ii) The *City proposes a primary external pool* consisting of the following, similar sized, Marathon County municipalities: *Town of Kronenwetter; City of Mosinee; Town of Rib Mountain; Village of Rothschild; and Village of Weston.*
 - (iii) Since Schofield is a suburb of Wausau, it also proposes a *secondary external pool* consisting of the following public employers: *City of Wausau; Marathon County; D.C. Everest Area School District; and Wausau School District.*
 - (iv) The *Union proposes* the following cities scattered throughout central Wisconsin: *Mosinee; Plover; Rhinelander; Stevens Point; and Wausau.*
 - (vi) The parties thus agree that the *City of Mosinee* should be a primary external comparable, they disagree whether the *City of Wausau* should be a primary or a secondary external comparable, and they disagree on the remainder of their proposed external comparables.
 - (b) The City proposed *external comparables* are the true comparables for the City of Schofield.
 - (i) The City has chosen to compare itself with cities that are *similar in size, economic base and population*, and that are *geographically proximate*; the propriety of these criteria for determining a comparable pool, has been recognized by many Wisconsin interest arbitrators.²
 - (ii) *Employer Exhibit #22* shows that The primary external comparables proposed by the City are geographically

² Citing the following arbitral decisions: *Arbitrator Kessler in Grant County Courthouse*, Dec. No. 29200-A (1998); *Arbitrator Tyson in Iowa County Courthouse*, Dec. No. 27608-A (1994); and *Arbitrator Malamud in Oneida County (Public Health)*, Dec. No. 28021 (1994).

proximate to it, and that all comparables, primary and secondary, are located within Marathon County.

- (iii) *Employer Exhibits #24 through #32 show comparable equalized values and populations within the City proposed primary external comparables; while the City of Schofield has the lowest equalized value and the second lowest population among these comparables, most are suburbs to the City of Wausau and all are less than 10 miles from the City of Schofield.*
- (c) The Union proposed external comparables are unsupported by data and include municipalities that are not true comparables for the City of Schofield.
- (i) The Union has failed to support its proposed external comparables with comparison data such as size, economic base and population.
 - (ii) The City has provided rebuttal exhibits which provide the following information: with the exception of Mosinee, the Union proposed external comparables are significantly higher in *equalized value* and in *population* than the City of Schofield; three of the Union proposed comparables are in either Portage or Oneida Counties and are too scattered to be proper comparables; Stevens Point and Rhinelander are 35 and 60 miles away from Schofield.³
 - (iii) It is unlikely the City would ever recruit employees from Plover, Rhinelander or Stevens Point; not only are they much larger and at a considerable distance from Schofield, but the job duties and the sizes of bargaining units are much different.⁴
 - (iv) The City of Schofield is a small municipality with only 2,422 residents; the characteristics of small municipalities are quite different from those of larger cities, including, assuredly, both the volume of work and the degree of contact with the public.
- (d) On the above described bases, the City proposed primary and secondary external comparison pools should be selected by the Arbitrator in these proceedings.
- (2) The Union proposed pension contribution is both excessive and unsupported by the internal comparables.

³ Citing the contents of Employer rebuttal exhibits properly submitted prior to June 7, 1999; citing also the decision of *Arbitrator Vernon in Langlade County (Sheriff's Department)*, Dec. No. 22203-A (1985), regarding the inappropriateness of geographically scattered comparables.

⁴ Emphasizing the previously cited decisions of *Arbitrator Malamud in Oneida Health*, and *Arbitrator Tyson in Iowa County (Highway)*.

- (a) The City considers the pension contribution level to be the primary issue in dispute in these proceedings and, since this is an initial contract, there is no "status quo" in the traditional sense of the term.⁵
- (b) The City currently pays \$69.00 per week or \$3,588 per year to the one full-time unit employee, and \$44.96 per week to the one part-time unit employee. While this payment has been made separate from wages and been considered a form of retirement compensation, the employees have total discretion to either invest the funds in a retirement account or to spend the money; accordingly, the payments are really additional wages and are considered taxable income.
- (c) The final offers of the Union and the Company agree that the employees should receive payments that will be deposited directly into a Sec. 457 deferred compensation plan, thereby making these contributions non-taxable, but they disagree on the amount to be contributed by the Employer.
- (d) Based upon 1996 wages rates, the pension compensation received by the full-time employee is 17.9% of base income, and that of the part-time employee is 19.88% of base income.
 - (i) The Union proposes to increase the contribution levels to \$79 per week on January 1, 1997, and to \$83 per week on January 1, 1998.
 - (ii) The City proposes a fair and above average pension contribution of 12% of the employees' gross annual incomes, and adding the difference from the previous pension contribution into the wage rates of the two employees, an increase of 56¢ per hour.
 - (iii) The City proposes that its pension proposal would be effective on the date of the arbitration award. Since the two bargaining unit employees have continued to receive the previous cash payments to date, it is unclear how the Union's pension proposal would be implemented, since it also requires that the weekly contributions be placed into a Sec. 457 deferred compensation plan.
- (e) The City's final offer is reasonable and consistent with the pension contribution levels of the City's police officers and department of public works employees.
 - (i) Arbitrators have long recognized the importance of maintaining consistency in fringe benefits within internal bargaining units.⁶
 - (ii) Since the two clerical employees are now organized, as are the DPW employees and the Police Officers, the City is attempting to establish internal consistency in fringe benefits for all of its employees, and its final offer achieves this goal.

⁵ Citing the decision of *Arbitrator Dichter* in Buffalo County (Courthouse), Dec. No.29145-A (1998).

⁶ Citing the decisions of *Arbitrator Vernon* in Winnebago County, Dec. No. 26494-A (1991), and *Arbitrator Malamud* in Greendale School District, Dec. No. 25499-A (1989).

- (iii) The City of Schofield Police Officers currently receive a 12.9% WRS contribution rate, with the City paying both the employer and the employee shares; because of the potential danger involved in their jobs, protective service employees in Wisconsin receive a slightly higher retirement benefit than other municipal employees.⁷
- (iv) Despite the pattern to the contrary in Wisconsin, the Union proposed pension benefit, would exceed that of the City of Schofield Police Officers; Police Officers in Schofield have never received a retirement contribution of the 18% to 20% proposed by the Union in these proceedings.⁸
- (v) The Union's final offer proposes an excessive employer contribution level of 17%-18% in 1997 and 20%-22.6% in 1998; the City's offer proposes a City pension contribution at a level which is consistent and reasonable when compared to City of Schofield Police Officers.
- (f) The Department of Public Works employees receive a pension contribution consistent with the City's final offer.
 - (i) The Union is proposing the same dollar amount contribution the City currently pays to the Department of Public Works employees, i.e. \$79 per week increasing to \$83 per week on January 1, 1997; these contribution levels equate to 12% to 13% of the DPW employees' gross incomes, however, not 19% to 20%.⁹
 - (ii) The City's final offer of 12% is above the pension percentage received by the DPW employees in 1996, the base year utilized by the City in calculating its pension contribution for employees in the dispute at hand.
 - (iii) While the City has increased the dollar contribution level each year of the contract for DPW employees, this simply maintains the historical average pension contribution rate of approximately 12% to 13%.
- (g) The Union pension proposal to increase the City's pension contribution level to the same dollar amount received by DPW employees would create a substantial inequity on behalf of the DPW employees.
 - (i) In the past, the City's clerical employees have received a significantly higher "pension contribution" than their co-workers; clearly, it is not fair or reasonable to perpetuate this inequity in the initial contract between the City and the Union.

⁷ Citing the contents of Employer Exhibit #45.

⁸ Citing the contents of Employer Exhibits #17 and #45.

⁹ Citing the contents of Employer Exhibit #17, which shows the annual pension contribution for a Street Crew Chief increasing from 11.45% of annual base income in 1996, to 12.9% in 1999.

- (ii) With the exception of its elected officials, all employees in the City of Schofield are now unionized. This initial contract should establish equity and consistency in fringe benefits for City employees; the Union's final offer, however, does not create equity or internal consistency, but rather creates an unreasonably high pension benefit for select employees.¹⁰
 - (iii) The difference in pension benefits is bound to have a negative effect on the morale of employees who receive less; one can expect that if the Union's final offer is selected in these proceedings, the DPW bargaining unit will seek a similar pension contribution by the City to achieve the same 20% to 22% pension contribution rate.
 - (iv) The Union has not demonstrated the need for implementation of the special and excessive pension benefit for the two employees in this unit, but simply *wants* this benefit permanently entrenched in the contract; there is no justification for granting a select group of employees a significantly better pension benefit than that received by the other employees in the City or in comparable communities.
 - (v) In sum, the City's final offer accomplishes three goals: *first*, it establishes that pension contributions be administered in a percentage fashion so that the dollar contribution will automatically increase as wages increase; *second*, it brings the City pension contribution rate for the clerical workers to a level more consistent with the Police Officers and DPW workers; and, *third*, to account for any loss in "pension contributions", it has added the difference in the pension contribution rate directly onto the wage rates for the clerical employees, thereby improving the employees' annual income which will compound year after year. By way of contrast, the Union offer increases the City's pension contribution rate to 22% and creates a further disparity among other City employees.
- (3) The pension contribution rate in the external comparable pool clearly supports arbitral selection of the City's final offer.
- (a) Although internal comparables are given great weight when determining fringe benefits, external comparables are also given significant weight.¹¹
 - (b) Arbitral consideration of Wisconsin comparables clearly support its proposed 12% pension contribution rate; WRS pension contribution rates were 11% in 1998, while the Union proposes increases to more than 20%.¹²

¹⁰ Citing the decision of *Arbitrator Oestreicher* in City of Oshkosh (Police), Dec. No. 27569-A (1993).

¹¹ Citing the decision of *Arbitrator Grenig* in City of Wauwatosa (Dispatcher), Dec. No. 29479-A (1999).

¹² Citing the contents of Employer Exhibits #17 and #45.

- (c) Arbitral consideration of the primary and secondary external comparables proposed by the City support its proposed 12% pension contribution rate, in that each relies on percentage pension contributions, and none exceeds the 12% rate proposed by the City.¹³
 - (d) The Union offer asks for nearly twice the pension contribution provided by the external comparables, it has not presented any comparable data or evidence to support its excessive pension proposal, and it has not submitted wage rates for various positions in its proposed comparable pool, even though the parties are in agreement on wages for 1997 and 1998.
 - (e) In summary, arbitral consideration of the external comparables shows that the Union's pension proposal is both excessive and should be rejected.
- (4) The City proposes to increase wages by an additional 56¢ per hour, to make the affected employees "whole" while granting them a comparable pension benefit.

- (a) Both parties have proposed the exact same wage rates for 1997 and 1998.¹⁴
- (b) The City has proposed a three-year contract which includes a 2.75% wage increase on January 1, 1999 and an additional 56¢ per hour increase to be effective with the City's 12% pension contribution, as shown below:

	<u>1/1/97</u>	<u>1/1/98</u>	<u>1/1/99</u>	<u>Eff. Upon 12% Pension Cont.</u>
Mun. Court. Clerk (2,080 hrs./yr.)	\$9.96	\$10.23	\$10.51	\$11.07
DPW Admin. Asst. (1,248 hrs./yr.)	\$7.45	\$7.65	\$7.86	\$8.42

- (c) In the past, those in the clerical unit have received *taxable income* in the form of cash considered to be a "pension contribution" on behalf of the City; both final offers place the City's pension contribution into a *non-taxable* Sec. 457 deferred compensation plan.
- (d) The City is offering a competitive and generous pension contribution of 12% of gross income, while the Union proposes increasing this figure to equal up to 22% of gross income.
- (e) The City has clearly demonstrated that the internal and external comparables support a reduction in current pension benefits, and instead of merely decreasing the excessive pension contribution has placed the difference directly on the wage rates, thus making the employees "whole" for any lost income.¹⁵
- (f) Because the City's 12% pension contribution change would not

¹³ Citing the contents of Employer Exhibit #33.

¹⁴ Citing the contents of Employer Exhibits #3 and #4.

¹⁵ Citing the contents of Employer Exhibit #15.

become effective until the implementation of the arbitral award, the employees are still receiving generous pension contributions until this time.

- (g) If the City were to cost-out the difference in pension benefits based upon the affected employees' 1999 wage rates, when the 12% wage rates would have become effective, the increase to the wage rates would be 46¢ to 49¢ cents per hour, instead of the 56¢ they would receive.¹⁶
 - (h) In its exhibits, the Union provided wage rates for employees in its proposed external comparable pool but it failed to provide pension contribution data; on June 10, 1999 it submitted an additional exhibit showing wage rates for various employees in the City's proposed external comparable pool. While the purpose of the additional exhibit is unclear, any attempt to argue low wage rates would be better addressed by the City's final offer.¹⁷
 - (i) The City's final offer would *kill two birds with one stone* by providing a competitive and equitable pension plan plus a considerable wage increase to compensate for the pension contribution adjustment; the Union proposal would *permanently* establish an unjustified and excessive pension benefit and would not address any wage catch-up, thus providing more fuel for future negotiations.
 - (j) In summary, the City's final offer better addresses the established internal and external pension pattern and considerably improves the wage rates, while the Union's final offer argues the agreed-upon wages while ignoring the primary pension contribution issue.
- (5) The City's Police contract, in addition to all of the external comparables, does *not* contain a *just cause provision* requiring a written notice warning notice prior to discharge.
- (a) Both parties' final offers contain just cause provisions addressing discipline and discharge.
 - (b) The Union's proposed language provides that an employee must first receive a written warning, with a copy to the Union, before discharge or suspension, except for certain listed offenses and "other flagrant violations", with no clarification of the latter category, and with warning notice no longer effective after six months.
 - (c) The City's Police contract does not include language similar to that proposed by the Union, and it is not included in the primary external comparables proposed by the City.¹⁸
 - (d) The just cause provisions contained in both final offers is sufficient to provide the affected employees with protection from arbitrary disciplinary actions.

¹⁶ Citing the contents of Employer Exhibit #15.

¹⁷ The City's final offer would provide 8.2% and 10% wage lifts in 1999 for the Municipal Court Clerk and the DPW Administrative Assistant classifications, respectively, and these wage increases will continue to compound year after year.

¹⁸ Citing the contents of Employer Exhibit #38, at pages 40-44.

- (6) The City proposed three year agreement is more logical and is consistent with the City Police and DPW contracts.
- (a) Since the parties are arbitrating an initial contract, Section 111.70(4)8m permits either to pursue a three-year agreement.
 - (b) Since calendar 1999 is largely over, the City's three year proposal is more logical, in that it would allow the parties to start fresh with the year 2000 when they return to the bargaining table.¹⁹
 - (c) The three year duration of the City's DPW and Police Department agreements run from 1997-1999.²⁰
- (7) The City's final offer exceeds and is more in line with the CPI than the final offer of the Union.
- (a) Although the CPI is not the sole and exclusive indicator of the appropriate level of settlement in this case, it should be balanced with the other statutory arbitral criteria to determine which offer, in its totality, is the more appropriate.
 - (b) In 1997 the City's total package increase is 4.27%, at least 2.5% above the National U.S. City Average, and the Non metro Urban Areas CPI for 1997, and the Union's total package increase is 6.11%.²¹
 - (c) In 1998 the City's total package increase is 2.11% versus the Union proposed increase of 2.8%, against CPI increases of 1.6% and 2.0% for the U.S. Cities and the Non metro Urban Areas.
 - (d) In 1999 the City's total package increase is 3.03% against CPI increases of 1.6% and 2.1% for the U.S. Cities and the Non metro Urban Areas.
 - (e) In summary that the final offer of the City for all three years more closely matches the CPI, and supports selection of its final offer in these proceedings.
- (8) The City's final offer is more reasonable and is in the best interests and welfare of the public, on the following principal bases.
- (a) The question in this area is whether it is reasonable for the City to pay an unjustified 20% to 22% pension contribution to the affected employees.
 - (b) Rewarding employees in the unit with a much larger pension benefit than other City employees will not be conducive to employee morale.
 - (c) Providing all employees with a similar pension will protect the Employer from being "whipsawed" by DPW employees

¹⁹ Citing the decision of the undersigned in City of Kaukauna, Dec. No. 26061-A (1990).

²⁰ Citing the contents of Employer Exhibits #20 and #21.

²¹ Citing the contents of Employer Exhibits #10, #46 and #47.

claiming that contributions should be at the same level in the future.

- (d) The City offer maintains a balance on the issues, establishes a reasonable basis for future internal and external comparisons, and maintains a consistent level of benefits among City employees, thus reducing the potential future need for outside services such as arbitration.

In summary and conclusion, that the final offer of the City should be selected by the Arbitrator in these proceedings on the following summarized bases: *first*, it would maintain consistency in the level of pension benefits provided to other City employees, versus creating unreasonable inequities among these employees; *second*, the final offer of the City is supported by the external comparables proposed by it in these proceedings; *third*, the Union's just cause proposal is both unreasonable and unclear, particularly in its limitations upon the City's authority to discipline its employees; *fourth*, the City's three year proposal is more sensible than implementing a contract which has already expired; *fifth*, the City's final offer is favored by consideration of the cost of living criterion; and, *sixth*, the City's final offer provides a fair base for both internal and external comparisons in future contract renewal negotiations.

In its *reply brief*, the City emphasized or reemphasized the following principal considerations and arguments.

- (1) The Union has not provided any evidence to justify a statewide comparable pool.
 - (a) While the Union submitted a map of the State of Wisconsin, it failed to locate thereupon, all of the cities/villages scattered throughout the state which it urges as external comparables.
 - (b) The Union has apparently taken a shot-gun approach when selecting comparables, as the only statistical data it has provided are populations ranging from 2,020 to 38,376.
 - (c) Arbitrators have generally rejected general proposals for statewide primary external comparison groups.²²
 - (d) The Union has not provided any evidence or rationale as to how they have derived their external comparable pool; indeed, it remains unclear exactly who its proposed external comparables are, based upon its exhibits and brief.

²² Citing the following arbitral decisions: the undersigned in Wautoma Area School District, Dec. No. 26387-A (1990); Arbitrator Michelstetter in Unified Board of Grant & Iowa Counties, Dec. No. 27960-A (1994); and Arbitrator Baron in Brown County (Health Care), Dec. no. 45310 (1991).

- (e) In summary, that the Arbitrator should select the city proposed primary and secondary pools of external comparables.
- (2) Although wages are not at issue, the Union compares its wage rates to unlike positions while ignoring the pension benefits received by the external comparables.
- (a) The Union is attempting to justify its excessive pension proposal by attacking the wage rates of the clerical employees, but the parties are not in disagreement for wages in 1997 and 1998.
 - (b) The two positions in this unit consist of a full-time Municipal Court Clerk and a part-time Administrative Assistant in the DPW, and the Union has submitted job descriptions for these positions; on pages 15-18 of its brief, however, the Union compares the internal wage rates to positions such as City Clerk, City Treasurer, Clerk/Treasurer, Deputy Clerk, Payroll Systems Employee, Accounting Assistant I and II, Assistant City Treasurer, and Assistant Deputy Clerk.
 - (c) Most likely the Union cited positions are not similar to the Municipal Clerk or the Administrative Assistant. In many cases, the City Clerks, City Treasurers, or Clerk/Treasurers are elected officials, as is the Clerk/Treasurer in the City of Schofield, and they are clearly distinct from other clerical positions due to their substantially different job duties and responsibilities.
 - (d) The lack of Union submitted job descriptions make it impossible to know if the jobs relied upon by it are functionally comparable to those in issue in these proceedings, and the municipalities proposed by it as comparables have different economic conditions and much higher populations.
 - (e) The Union proposed excessive pension benefit does not make up for its arguments that wages are low, and it would create a lopsided benefit package that would never conform to the benefits packages received in any comparable group.
 - (f) The majority of the Union proposed comparables participate in the WRS and are receiving a 10.2% pension contribution rate, and none receive a pension benefit equating to 20% to 22% of annual income.
- (3) The Union fails to acknowledge the City of Schofield Police Officers' pension benefit, and it ignores the actual percentage or benefit benefits received by DPW employees.
- (a) The internal comparables in the City of Schofield, the Police and the DPW employees, receive pension contributions in the 12.5% to 12.9% range, which are close to the 12% contribution rate proposed by the Employer in these proceedings.
 - (b) The Union has provided no reasonable explanation as to why the clerical employees would receive a disproportionately high pension benefit in relation to their hourly wages, and such a situation would cause havoc in future contract negotiations with other bargaining units.

- (c) Wisconsin interest arbitrators have determined that the fringe benefits provided to internal comparables should remain common and equitable.²³

In summary and conclusion that the City final offer should be selected on the following bases: its offer is supported by internal comparables, external comparables and established arbitral principles which establish that all internal employees should be treated consistently on fringe benefits; it has proposed a comparable and competitive pension benefit and has made the employees "whole" by providing substantial wage increases in 1999; its three year contract duration and just cause language are more reasonable and sensible; and its offer better serves the taxpayers. The City's offer was also developed with a high degree of regard for both the good faith collective bargaining process and the public policy constructs of interest arbitration, while the Union's offer fails to recognize the inequity and unfairness created by it in relationship to the internal and external comparables.

POSITION OF THE UNION

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

- (1) That those facts material and relevant to the outcome of this proceeding include the following:
 - (a) Teamsters Local 662 was recognized as the collective bargaining representative of the City's clerical employees in 1997.
 - (b) The parties entered into negotiations, were unable to reach full agreement on the terms of their initial labor agreement, and the matter proceeded to final and binding arbitration.
 - (c) Three impasse items remain, the *term of the agreement*, the *discipline and discharge language*, and the *pension benefits*; the parties agree, however, that the pension benefit dispute is the most crucial of three impasse items.
 - (d) That in addressing the arbitral criterion contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, neither the "factor given greatest weight" nor the "factor given greater weight" criteria apply, in that the City is not subject to any limitations on its spending, and it has not alleged any inability to pay.

²³ Citing the decision of *Arbitrator Tyson in Columbia County Courthouse*, Dec. No. 28997-A (1997).

- (2) Arbitral consideration of the *internal comparables* establishes that the Union's final offer is more reasonable and equitable.
- (a) The Union's pension offer mirrors the City's Water and Street Unit's pension and, therefore, should be selected.
- (i) Both parties have agreed that the Water and Street Department Unit is a proper internal comparable.
- (ii) The Union's final offer on pension benefits mirrors the 1997-1998 benefits enjoyed by the Water and Street Department employees, under which the Employer would pay \$79 per week in 1997 and \$83 per in 1998, into a deferred compensation program; these amounts are identical to the contributions made by the City into the Central States Southeast and Southwest Areas Pension Funds on behalf of Water and Street Department employees in 1997 and 1998.
- (iii) Interest arbitrators consistently hold that internal comparisons are entitled to substantial weight, particularly when establishing common fringe benefits among different bargaining units of the Employer.²⁴
- (iv) Because the Union's pension offer mirrors the Schofield Water and Street Department unit's pension benefits, it should be selected as the more reasonable and equitable of the two pension proposals.
- (v) The Union's final offer on the discharge article also mirrors that of the language in the Water and Street Department unit's current agreement.
- (vi) On the above described bases that the Union's final offer on pensions and discharges is preferable to those of the Employer, and the Union's final offer should prevail.
- (b) The Clerical employees received pension benefits virtually identical to the Water and Street employees prior to their organization by Local #662, and the prior trend should continue.
- (i) The clerical employees have been receiving virtually the same pension benefits as the Water and Street employees since 1988.
- (ii) According to the non-union employee benefits breakdown summary for the past ten years submitted with its internal comparables information, the benefits of the clericals were slightly behind the Water and Street employees from 1988 to 1993.
- (iii) From 1994 through 1996, however, both Water and Street Department employees and the full-time clerical department employees received \$3,588 annually in pension benefits; the Water and Street Department

²⁴ Citing the following arbitral decisions: *Arbitrator Flaten in Douglas County*, Dec. No. 27594-A (1993); *Arbitrator Vernon in City of Greenfield (Police Department)*, Dec. No. 27648-A (1994); *Arbitrator Michelstetter in Buffalo County (Highway Department)*, Dec. No. 27522-A (1991); and *Arbitrator Bognanno in Sibley County Sheriff's Department*, 111 LA 795 (1998);

employees have since received an increase in benefits, effective 1997-1999, but the clericals have been frozen in their 1996 benefit level pending completion of these proceedings.

- (iv) The fact remains that prior to the clerical employees becoming organized, they received virtually identical benefits to those in the Water and Street Department, and the City cannot be allowed to decrease those benefits now that the clericals have organized. The City has agreed with Local #662 to the same pension benefits proposed by it in these proceedings for the Water and Street Department employees, and the Union's offer in these proceedings merely preserves the clerical's established benefits package, and is the more reasonable of the two offers.²⁵
 - (v) By adjusting the clerical employees' pension contribution to 12%, or to the current contribution rate under WRS, the City may then attempt to use that adjustment to set a pattern for the Water and Street Departments in future negotiations.
 - (vi) The Union's proposal, which is in line with the historic pattern setter, must be selected in these proceedings.
- (3) The *total compensation package* in the Union's final offer, more closely resembles the wages and benefits of the external comparables and, therefore, is more reasonable and equitable.
- (a) The Union proposed *external comparables* are more appropriate.
 - (i) The Union proposed external comparables would include the *Cities of River Falls and Stoughton, the Villages of Brown Deer, Whitefish Bay, and Pleasant Prairie, the Cities of Marinette, Glendale, and Wisconsin Rapids, the Village of Allouez, the Cities of Marshfield, Merrill, and Weston, the Village of Butler, and the Cities of Chetek, Cumberland, New Glarus, Marshall and Gross Plains, the Village of Rothschild, and the City of Rhinelander.*
 - (ii) While the Union proposed comparables may not be in close proximity with the City of Schofield, each employs a Municipal Court Clerk and/or a Deputy Clerk, and *it is the similarity of job descriptions* that must determine whether a given municipality and its wage and benefit rates are proper for comparison to the current clerical bargaining unit.

²⁵ Citing the following arbitral decisions: *Arbitrator Stern in City of Wisconsin Rapids*, Dec. No. 46223, INT/ARB 6127 (1992); *Arbitrator Malamud in Lincoln County (Courthouse)*, Dec. No. 28751-A (1997); and *Arbitrator Krinsky in Gillette School District*, Dec. No. 301 (1991).

- (iii) Arbitrators consistently hold that job similarity can outweigh the mere geographic proximity of external comparables.²⁶
 - (iv) That while the population of Schofield is 2,422, the Municipal Court Clerk also has responsibility for the Weston Municipal Court; the combined populations of Schofield and Weston, 13,652, is similar to that of those municipalities selected as external comparables by the Union.
 - (v) In accordance with the above, the Union proposed external comparables are thus comparable on the basis of both population and job content, and they should be selected over those proposed by the Employer.
- (b) When considered as a whole, the Union wage and benefit proposal is more reasonable than that of the City.
- (i) According to the City's calculations, the \$79 and \$83 weekly pension contributions for 1997 and 1998 would constitute 19.83% of Municipal Clerk's and 22.09% of the Administrative Assistant's annual wages for 1997, and 20.28% and 22.6% for 1998.²⁷
 - (ii) The City contends that the above pension contribution percentages are disproportionate to those for the surrounding municipalities which hover around 12%; the Arbitrator must, however, examine the total compensation package for the clerical bargaining unit in determining whose offer better reflects the comparable wages and benefits throughout the community and the area.²⁸

²⁶ Citing the decisions of *Arbitrator Flaten in Douglas County (Law Enforcement Personnel)*, Dec. No. 27594-A (1993), and *Arbitrator Dichter in North Shore Water Commission*, 111 LA 321 (1998).

²⁷ Citing the contents of Employer Exhibit #17.

²⁸ Citing the *decision of Arbitrator Michelstetter in Buffalo County (Highway Department)*, Dec. No. 27522-A (1991).

- (iii) A comprehensive review of the combined wages and benefits shows that the Union's final offer more closely matches the total compensation packages of both the City's and the Union's external comparables: City of Mosinee clerical workers receive an 11.4% retirement contribution, but the current wages for the City Clerk and the City Treasurer are \$16.67 per hour, and for the Police Clerk is \$12.04 per hour; Town of Rib Mountain clerical workers receive a 12% pension contribution, but the current wage for the Clerk/Treasurer is \$18.77 per hour, for the Deputy Clerk is \$12.10 per hour, and for the Administrative Assistant is \$10.00 per hour; Village of Rothschild employees receive 10.2% pension contributions, but the current wage for Clerical Assistants is \$9.59 per hour, for a Deputy Clerk/Utility Clerk is \$12.22 per hour, for a Police Secretary is \$11.73 per hour, and for a Clerk/Treasurer is \$18.87 per hour; Village of Weston clericals participate in WRS, but the current rate for the Deputy Clerk/Treasurer and the Utilities Clerk classifications is \$11.91 per hour; City of Wausau pays its Payroll Systems employees \$13.99 per hour, its Accounting Assistant II receives \$13.67 per hour, and its Accounting Assistant I receives \$11.90 per hour; Marathon County pays its Assistant Deputy Clerk and its Assistant City Treasurer \$14.55 per hour, and its Clerical Assistant \$11.22 per hour; and the DC Everest School System pays its Secretary between \$10 and \$12 per hour, and he/she participates in the WRS.²⁹
- (iv) The *City proposed external comparables* do not provide support for its proposed pension contribution reduction to 12%; to the contrary, the greater pension contribution proposed by the Union simply serves to make up the disparity in wages and to bring the Schofield clerical total compensation package more in line with the surrounding communities.
- (v) By way of example of the above conclusion, the City's calculations for the Municipal Clerk position show a combined 1998 cost of \$33,598, including wages, insurance, pension and social security; calculating the wage and pension figures for the comparables on the basis of 40 hours per week for a full year, indicates the cost of the Mosinee City Clerk at \$38,394.68, and the Town of Rib Mountain Clerk-Treasurer at \$43,726.59.
- (vi) The *Union proposed external comparables* show similarly high wage rates, including the following: City of Chetek Deputy Clerk - \$15.50 per hour and an 18% pension contribution rate; Cumberland Deputy Clerk - \$15.00 and participation in the WRS; New Glarus Deputy Clerk - \$13.00 per hour and participation in WRS; Marshall Deputy Clerk = \$12.00 per hour and participation in WRS; Cross Plains Deputy Clerk - \$11.44 per hour and participation in WRS; and City of Rhinelander Deputy Clerk - \$13.10 per hour and

²⁹ Citing the contents of a *Supplemental Union Exhibit* properly submitted to the Arbitrator in a letter dated June 8, 1999.

participation in WRS.³⁰

- (vii) The above conclusions are also borne out by examining wages paid for other clerical positions in the area surrounding Schofield and throughout the State of Wisconsin.
 - (viii) When assessing the total compensation package represented in the Union's and the City's final offers, it is clear that the Union's final offer is more in line with those in the surrounding communities.
 - (ix) The City, in an attempt to compensate the clerical employees for the lower wages, included a 56¢ per hour wage increase to become effective at the same time the 12% pension contribution takes effect. This is no more than a token gesture, however, in that it fails to adequately compensate them for the decrease in benefits; it fails to make up the difference after payroll withholding, and it applies to the first year alone.
- (4) The issue of contract duration has become moot, in that the Union proposed two year agreement and the City proposed three year agreement have both, virtually, expired. Two years has, however, become standard for an initial agreement and is not out of line with comparables; accordingly the contract duration factor favors selection of the final offer of the Union.

On the basis of all of the above the Union submits that its final offer is more reasonable and equitable than that of the Employer, and it urges that it be selected in these proceedings.

In its *reply brief* the Union emphasized or reemphasized the following principal considerations and arguments.

- (1) The Union proposed external comparables are more appropriate for use in these proceedings.
 - (a) While the City contends that the Union proposed external comparables, with the exception of Mosinee, are considerably higher in equalized values and population, and therefore not proper comparables, these claims are not supported by the facts and by the City's own proposed comparables.

³⁰ Citing also the *decision of Arbitrator Kerkman in Rio Community School District*, Dec. No. 26328-A (1990).

- (b) The City takes issue with the inclusion of Plover, Rhineland and Stevens Point in its proposed external comparable group, on the basis of equalized values; the equalized values of Plover and Rhineland equal \$385,708,600 and \$303,947,500, respectively.³¹ These values are no more out of proportion to Schofield's \$117,602,200 equalized value, than those of Rib Mountain and Weston proposed by the City as primary comparables, with equalized values of \$379,674,500 and \$372,169,300, respectively.³²
- (c) The City's brief completely ignores the fact that the Municipal Court Clerk position in the bargaining unit has responsibilities for both Schofield and Weston, with combined populations of 13,362 and combined equalized values of \$489,771,500. Viewed from this perspective, the Union proposed comparables are clearly more reasonable in terms of both population and equalized value.

³¹ Citing the City's Brief at page 12.

³² Citing the City's Brief at page 12.

- (d) The City contends that the job duties and size of the bargaining units in Plover, Rhinelander and Stevens Point make them inappropriate municipalities for comparison purposes. Data submitted by the Union, however, indicate that the Village of Plover employs a Receptionist/Secretary and a Police Secretary, the City of Rhinelander has three clerical positions in addition to the Deputy Clerk: Attorney's Secretary, Police Administrative Aide and Billing Clerk; and the City of Stevens Point employs a Confidential Secretary, a Secretary and a Secretary for the Mayor, while the clerical staff comparables proposed by the City range in size from one to five employees.³³
 - (e) The City has provided the Arbitrator with wage and population data for a number of additional municipalities throughout the State of Wisconsin. The Union proposed comparables have populations comparable to the combined populations of Schofield and Weston, thereby making them appropriate for comparison with the bargaining unit in these proceedings; additionally, the municipalities listed as having deputy clerk positions have populations closer to Schofield by itself, thus offering an appropriate comparison for the Schofield Administrative Assistant position.
 - (f) Regardless of unit size, equalized value or municipality population, the Union proposed comparables most accurately reflect the Schofield bargaining unit makeup in terms of positions; each of the Union proposed comparables has a municipal court clerk and/or deputy clerk position, thus making them suitable comparisons for the Schofield bargaining unit.³⁴
 - (g) The Union proposed comparables are thus suitable in terms of size of clerical complement, population and type of positions; therefore they should be chosen over those proposed by the City.
- (2) The Union's pension proposal is supported by the internal comparables.
- (a) The City urges that its pension proposal is the more equitable, in that it would create internal consistency among the Police Officers, the DPW and the Clerical bargaining units, in that all three would receive pension contributions approximating 12% of their gross wages.
 - (b) Contrary to the City's claims, the Union's final offer would maintain consistency with the pension benefits received by the clerical employees over the past ten years; in this connection, it is undisputed that the clerical employees have received roughly the same amount in pension contributions as the Water and Street Department employees for at least the past ten years.
 - (c) Despite its inequity based arguments, it was the City, itself, which elected to pay the clerical employees the supposedly inequitable pension contributions prior to their becoming organized, the same benefit it now proposes to take

³³ Citing the contents of City Exhibits #34 to #37.

³⁴ Citing the decision of Arbitrator Flaten in Douglas County (Law Enforcement Personnel), WERC Dec. No. 27594-A (1993).

away.

- (d) It is unreasonable to characterize the Union's proposal as unreasonable and a perpetuation of inequity, and the City's proposal is nothing more than an attempt to punish the clerical unit for their organization; the true inequity would be if the clerical employees lost a benefit they currently receive, because they exercised their right to organize.
 - (e) There is no merit to the City's argument that the difference in pension benefits is bound to have a negative effect on the morale of the employees who receive less; the clerical employees have long received pension benefits equal in dollar amounts, and there is no evidence that this practice has negatively impacted upon the morale of the Police or the Water and Street Department employees, or that it has resulted in higher pension demands in these other units.
 - (f) In any event, the primary internal comparable should be the Teamster represented Water and Street Department employees, rather than the Police unit.³⁵ The clericals have consistently followed the pattern set by the Water and Street Department employees in the past, and this pattern should be continued following their organization.
 - (g) Contrary to inferences which might be drawn to the contrary, the Union proposes payment of back pension benefits into a Section 457 deferred compensation plan, under the new agreement.
 - (h) The Union's pension proposal is justifiably based on continuing what the clerical employees have traditionally received, i.e., an amount equal that received in the DPW unit.
- (3) The Union's pension proposal is necessary to supplement the clerical employees' wages, which are well below average among the external comparables.
- (a) The wages of the clericals have been traditionally lower than comparables because they received the higher pension benefit.
 - (b) The wage disparity between Schofield and the clerical employees in the surrounding municipalities is demonstrated in the Union submitted Summary of Wage Comparables. The Schofield Municipal Court Clerk currently receives \$9.67 per hour (the 1966 rate) while the Union proposed municipalities pay anywhere between \$12.18 to \$14.99 per hour; the Schofield Administrative Assistant receives \$7.23 per hour, versus comparables paying between \$11.69 to \$14.30 per hour.
 - (c) Even with the agreed upon wage increases for 1997 and 1998, the City's clerical wages continue to lag behind the comparables.
 - (d) When the Union's higher pension contribution is factored in, the City's clerical compensation packages lag behind the comparables.

³⁵ Citing the decision of *Arbitrator Stern in City of Wisconsin Rapids (Water Works & Lighting Commission)*, WERC Dec. No. 46223 (1992).

- (e) The City proposed 56¢ per hour "make whole" raise would not make the clericals whole for the pension reduction, because it fails to take into consideration the fact that it is taxed and will be decreased by standard deductions and withholdings.
- (4) The Union's *warning letter proposal* is supported by the Water and Street Department collective bargaining agreement.
 - (a) While the Union proposal differs from the Police agreement, it is identical to the language in the Water and Street Department agreement.
 - (b) Since the City has already agreed to identical language in another bargaining unit, there is no reason that it is not appropriate in the clerical agreement.
 - (c) The City presented no evidence that the identical language has caused problems in the Water of Street Department bargaining unit, and its speculative arguments should not be credited in these proceedings.
 - (d) On the above bases, the Union's warning letter proposal should be chosen.

In summary and conclusion that the Union's final offer should be accepted as the more reasonable and equitable pursuant to the statutory criteria contained in *Section 111.70(4)(cm)(7)* of the Wisconsin Statutes: its pension contribution proposal is identical to the primary internal comparable, the City's Water and Street Department Unit; the two employee groups have consistently received identical or nearly identical pension contribution benefits for the past ten years; in order to perpetuate this consistency and continue the benefits to which the clerical employees are accustomed and entitled, the Union's proposal should be chosen; the somewhat higher pension contributions are necessary to supplement the lower than average wages received in the clerical unit, as compared to the external comparables.

FINDINGS AND CONCLUSIONS

These proceedings involve the negotiation of the parties' initial labor agreement for the clerical unit, and involve three impasse items. While these items include the *just cause language to be included in the agreement* and the *duration of the agreement*, the parties are in full agreement that the most important impasse item is the extent and nature of the *Employer's pension contribution obligations*, in which connection they principally disagree as to the significance of the *non-negotiated status quo ante*.

Prior to applying the statutory criteria to the final offers of the

parties, reaching a decision, and rendering an award, the undersigned will preliminarily address the following considerations: *first*, the nature of the Wisconsin interest arbitration process, particularly in connection with cases involving proposed changes in the status quo ante; *second*, the pension contribution impasse item; *third*, the just cause language impasse item; and, *fourth*, the contract duration impasse item. Thereafter, the significance of certain remaining statutory criteria emphasized by the parties in arguing their respective cases, will be discussed.

The Nature of the Wisconsin Interest Arbitration Process

As emphasized by the undersigned in many prior decisions, Wisconsin interest arbitrators operate as *extensions of the normal contract negotiations process*, and their primary goal is to attempt to put the parties into the same position they would have occupied, but for their inability to achieve complete agreement at the bargaining table. The statutory criteria have not been comprehensively prioritized by the Wisconsin Legislature, and their relative importance is normally determined by arbitrators on case-by-case bases, depending upon the facts and circumstances present in each dispute.³⁶ Very generally, the relative importance of the statutory criteria are as follows: so-called *external intraindustry comparisons* are normally considered the most important and persuasive of the various criteria in connection with wage level disputes; *internal comparisons* are frequently regarded as most important in connection with certain types of fringe benefits disputes; even prior to the enactment of the greatest weight and the greater weight criteria, the *interests and welfare of the public criterion* had been accorded determinative

³⁶ The original statutory criteria have been modified to limit such arbitral discretion in two sets of circumstances: *first*, they now mandate application of the "**greatest weight**" upon "...any state law or directive lawfully issued by a state legislative 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."; and, *second*, they also now provide for "**greater weight**" to be placed upon "...economic conditions in the jurisdiction of the municipal employer" than to the remaining arbitral criteria contained in Section 111.70(4)(cm)(7r) of the Statutes.

There is nothing in the record to suggest that the "**greatest weight**" criterion has application in the case at hand, however, and the only potential application of the "**greater weight**" criterion would be in ensuring that the City's economic conditions are fully considered in determining *the composition of the primary external comparison pool*.

importance in situations involving inability to pay; the relative importance of the *cost-of-living criterion* varies with the state of the economy, being very important during periods of rapid movement in prices and declining in importance during periods of price stability; and the importance of the *other factors criterion* varies greatly based upon a wide variety of considerations.

The normal importance of any *pre-existing status quo* and the handling of proposed changes thereto, has been addressed by many interest neutrals and, in a decision rendered in 1982, the undersigned described the various considerations involved in the process as follows:

"When an interest arbitrator is faced with the demand to significantly modify past practices, or to add new language or new or innovative benefits, he will normally tread carefully. This factor is very well described in the following, frequently referenced excerpt from an interest arbitration decision by Professor John Flagler:

'In this contract making process, the arbitrator must resist any temptation to innovate, to plow new ground of his own choosing. He is committed to producing a contract which the parties themselves might have reached in the absence of extraordinary pressures which led to the exhaustion or rejection of their traditional remedies.

The arbitrator attempts to accomplish this objective by first understanding the nature and character of past agreements reached in a comparable area of the industry and in the firm. He must then carry forward the spirit and framework of past accommodations into the dispute before him. It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving to either party that which they could not have secured at the bargaining table.'

Over sixty years ago, John R. Commons and John B. Andrews urged the application of the same principle, in a mediation context.

'He acts purely as a go-between, seeking to ascertain, in confidence, the most that one party will take without entering on either a lockout or a strike. If he succeeds in this, he is really discovering the bargaining power of both sides and bringing them to the point where they would be if they made an agreement without him.'

The reluctance of interest neutrals to innovate or to plow new ground is much less pronounced in public sector disputes than in the private sector. In his treatise on public sector interest arbitration, Arbitrator Howard S. Block distinguished between the above referenced view in the private sector, and the perceived need for greater innovation in public sector disputes.

'...As we know, a principal guideline for resolving interest disputes in the private sector is prevailing industry practice --
...

* * * * *

...the public sector neutral, I submit, does not wander in an

uncharted field even though he must at times adopt an approach diametrically opposite to that used in the private sector. More often than in the private sector, he must be innovative; he must plow new ground. He cannot function as a lifeless mirror reflecting pre-collective negotiation practices which management may yearn to perpetuate but which are targets of multitudes of public sector employees in revolt.' "³⁷

The undersigned has also repeatedly emphasized in past decisions that in attempting to put parties into the same position they would have occupied but for their inability to reach full agreement at the bargaining table, Wisconsin interest arbitrators will normally closely examine the parties' *past practice* and/or their *negotiations history*, each of which considerations normally fall well within the scope of Section 111.70(4)(cm)(7r)(j) of the Wisconsin Statutes, and are likely to be accorded *determinative importance* when either or both parties are proposing changes in the *status quo ante*.

The Pension Contribution Impasse Item

In this, the most critical of the three impasse items, the parties differ on the nature and the level of the City's pension contributions. In this connection they are not "*starting from scratch*" on pensions, but rather operating from the perspective of at least a ten year practice adopted and followed by the Employer, pursuant to which it has historically paid pension benefits to its clerical employees in *specific dollar amounts*, with such dollar amounts clearly based upon *the annual dollar pension contribution levels agreed upon by the City and Local Union #662 in the preexisting DPW bargaining unit*.

³⁷ See the *decision of the undersigned in Elkhorn School District*, Case XI, No. 28262, MED/ARB-1266 (1982); the included quotations were from the following sources: *Arbitrator Flagler in Des Moines Transit Co.*, 38 LA 666; *Principles of Labor Legislation*, New York, Harper & Bros., 1916, page 125; and *Criteria in Public Sector Interest Disputes*, Reprint No. 230, Institute of Industrial Relations, UCLA, 1972, pp. 164-165.

<u>Years</u>	<u>DPW Employees Annual \$ Amounts</u>	<u>Clerical Employees Annual \$ Amounts</u>	<u>Annual \$ Differences</u>
1988	\$2,652.00	\$2,484.00	(\$168.00)
1989	\$2,652.00	\$2,484.00	(\$168.00)
1990	\$3,172.00	\$3,004.00	(\$168.00)
1991	\$3,172.00	\$3,004.00	(\$168.00)
1992	\$3,380.00	\$3,172.00	(\$208.00)
1993	\$3,588.00	\$3,389.00	(\$208.00)
1994	\$3,588.00	\$3,588.00	None
1995	\$3,588.00	\$3,588.00	None
1996	\$3,588.00	\$3,588.00	None
1997	\$4,108.00	\$3,588.00	(negotiations pending) ³⁸

The above dollar pension contribution relationships between Local Union #662 represented employees in the City's DPW bargaining unit and the then non-represented clerical employees, clearly and persuasively establishes three major considerations:

- (1) A well established history of annual dollar defined pension contributions paid to the referenced employees, rather than pension contributions determined by specified percentages of income.
- (2) An equally well established history of increasing the dollar defined pension contributions of clerical employees in tandem with the dollar defined pension contributions negotiated between the City and Local Union #662 for the DPW bargaining unit; these yearly dollar defined pension contributions for the clerical employees were \$168.00 per year below the DPW negotiated amounts from 1988-1991, they were \$208.00 per year below the DPW negotiated amounts for 1992-1993, and the amounts were identical for 1994-1996, or until Local #662 gained bargaining rights for the clerical employees.
- (3) The dollar defined pension contribution level for the clerical employees has remained the same during the parties' initial labor contract negotiations which led to these proceedings.

³⁸ See the letter and enclosures directed to Local Union #266 Representative Dave Reardon over the signature of City of Schofield Clerk Lynn Grych on September 25, 1998, a copy of which is included in the Union's exhibit notebook following the *Internal Comparisons* divider.

The Union has proposed that the 1996 dollar defined pension contribution for the clerical employees be increased to \$79.00 per week (i.e. to \$4,108.00 per year) for calendar year 1997, and increased to \$83.00 per week (i.e., to \$4,316.00 per year) for calendar year 1998, which proposal would regain parity with the pension contributions agreed upon by the parties for the DPW bargaining unit.³⁹ The Employer has proposed that its annual pension contribution for clerical employees be reduced to level representing 12% of gross wages, at which time the hourly wages of the employees would be increased by 56¢ per hour to offset the change.

³⁹ See Article 24 of the 1997-1998 labor agreement between the parties covering the DPW, a copy of which is included in the Union's exhibit notebook following the *Internal Comparisons* divider.

When faced with significant proposed changes in either a negotiated or non-negotiated status quo ante in public sector disputes, Wisconsin interest arbitrators have required the proponent of change to establish a *very persuasive basis for its proposal* and to bear the risk of non-persuasion.⁴⁰ In such situations the requisite *very persuasive basis for change* has normally been achieved by showing that *a legitimate problem exists which requires attention*, that *the disputed proposal reasonably addresses the problem*, and that *the proposed change is accompanied by an appropriate quid pro quo*. In connection with the first of these showings, it is noted that "...the proponent of language changes or additions, which normally cannot be quantified/costed on the same basis as so-called economic items, generally has the responsibility for presenting more than mere rhetoric or argument in support of such proposals."⁴¹

⁴⁰ See the following decisions of the undersigned which addressed the significance of the status quo ante in first labor contracts between parties: Hamilton School District, Case 29, No. 50369, INT/ARB-7151 (1995), at pages 17-18; and Shiocton School District, Case 10, No.47058, INT/ARB-6389 (1993), at pages 17-20.

⁴¹ See the decision of the undersigned in Hamilton School District, *supra*, at page 18.

The Employer has advanced a variety of arguments relating to why its pension contributions should be *reduced in amount* and why they should be defined on the basis of *percentages of earnings* rather than *fixed dollar amounts*.⁴² If the parties had been approaching their first contract negotiations with a "*blank slate*" in the pension area, some of these arguments would have been quite persuasive. As described above, however, the parties are not "*starting from scratch*" on employer pension contributions, but rather from the perspective of at least a ten year past practice adopted and followed by the Employer, pursuant to which it has historically paid pension benefits to its clerical employees in specific annual dollar amounts, which dollar amounts have clearly been based upon the annual dollar contribution levels negotiated by the parties for the DPW bargaining unit. There is simply no evidence in the record that this long standing past practice had resulted in the hypothetical potential problems described by the City in arguing its case. Indeed, the record suggests that *but for* the Union having gained representation rights in the clerical unit, the long standing past practice would have continued. On these bases, the Arbitrator has preliminarily concluded that the City has failed to establish the requisite *very persuasive basis* for its *proposed change in the status quo ante* and, accordingly, arbitral consideration of *the past practice criterion* clearly, persuasively and strongly favors selection of the final offer of the Union in these proceedings!⁴³

The Just Cause Language Impasse Item

The *just cause dispute* between the parties involves the Union proposed use of typical Teamsters language, identical to that which appears in the DPW agreement between the City and Local Union #662, versus City proposed just cause language which does not generally require a prior written warning within

⁴² The Employer proposed pension changes are clearly distinguishable from the typical so-called economic proposals.

⁴³ While the Employer urges that it has proposed increasing wages by 56¢ per hour to justify its proposed reduction in the dollar level of pension contributions, the adequacy of such a proposed *quid pro quo* would come into question only if the proponent of change has *established the existence of a legitimate problem requiring attention* and that *the proposed change reasonably addressed the problem*.

a particular time period prior to discharge or suspension. The Employer principally relies upon the language contained in the City's Police agreement and that utilized by its proposed external comparables, and the Union relies upon the apparent long standing use of its proposed language in the DPW agreement.

Without unnecessary elaboration, the undersigned finds the following considerations to be determinative on this impasse item: each party has proposed reasonable just cause language, and the incorporation of either proposal into the agreement would afford appropriate protection to the bargaining unit employees; despite the theoretical arguments of the Employer directed toward the previous written notice requirement and to certain alleged ambiguities contained in the Union's proposal, there is no evidence in the record indicating that its long standing use in the DPW bargaining unit has caused any significant problems; and the just cause language is clearly the least important of the three impasse items. On these bases, the undersigned has preliminarily concluded that consideration of the just cause language impasse item does not significantly favor the selection of the final offer of either party.

The Contract Duration Impasse Item

In this area the Union proposes a two year agreement covering calendar years 1997 and 1998 and the Employer proposes a three year agreement covering calendar years 1997, 1998 and 1999. The Union urges that the contract duration issue has become *moot* because its proposed two year agreement has already expired and the Employer proposed three year agreement is about to expire; it submits, however, that two year initial agreements are common and that its proposal is not out of line with the comparables. The City urges that the selection of its three year proposal is more logical on various bases, including the fact that it would thus be coextensive with the parties' DPW labor agreement, and expiration at the end of 1999 would allow the parties to start fresh with the new year when they return to the bargaining table.

Other things being equal, it is logical to conclude that a labor agreement expiring at the end of 1999 is preferable to one expiring one year earlier, and it is also logical to infer that the parties would prefer the

same contract durations for their DPW and clerical bargaining units. As discussed above, however, other things are not equal, in that the pension contribution issue is by far the most important of the three impasse items before the undersigned in these proceedings, and both parties recognized the secondary importance of the two remaining items. On these bases the undersigned has preliminarily concluded that while the three year contract duration proposed by the City is preferable to the two year duration proposed by the Union, this conclusion is insufficient, alone, to offset the earlier arbitral determination that consideration of the pension contribution impasse items favors selection of the final offer of the Union.

The Remaining Arbitral Criteria Emphasized by the Parties

What of the remaining arbitral criteria emphasized by the parties in presenting their respective cases, including *comparisons*, both internal and external, *cost of living*, the *interests and welfare of the public*, and the *overall level of compensation*.

As indicated earlier, *external comparisons* are often the most important and persuasive arbitral criteria in the disposition of *wage disputes*, but in the case at hand, they could not offset the City's failure to establish the prerequisite *very persuasive basis* in support of its proposed change in its ten year past practice of paying pension benefits in connection with the pension contribution impasse item. Additionally, the evidence relating to the makeup of the proposed external comparison group(s) was not fully persuasive on the following bases.

- (1) The *Union proposed external comparison group* was deficient in a number of major respects, including its reliance upon what amount to *statewide comparables* and its failure to establish the *functional comparability* of jobs cited by it in making comparisons.
 - (a) In examining the twenty employers comprising its proposed comparison group, four are located more than 200 miles from Schofield, another nine are more than 100 miles away, and only five of the twenty are located within 50 miles of Schofield. Not only are various of the proposed comparables located in different labor markets, but the Employer is quite correct that Wisconsin interest arbitrators, in interpreting and applying Section 111.70(4)(cm)(7) of the Wisconsin Statutes, have generally rejected statewide primary external comparison groups.
 - (b) Even when comparing wages within appropriate external comparison groups, it is normally necessary to establish the

functional comparability of the jobs being compared; reliance upon job titles or, for example, the general clerical nature of jobs, simply does not provide accurate and persuasive comparison data.

- (2) Evidence of what external comparables had been relied upon by the parties in negotiating their past DPW labor agreements might have been very persuasive, as might also have been the case in connection with the City's negotiation of past Police agreements.
- (3) *By way of dicta*, the undersigned will merely note that the composition of the City proposed primary and secondary external comparison groups was much more persuasive than those advanced by the Union in these proceedings.

While the *overall level of compensation criterion* may, for example, justify higher or lower wages or benefits levels between comparable employers and employees, there is no definitive evidence in the record justifying determinative weight being placed upon this criterion in the case at hand.

As previously discussed, there is no suggestion of inability to pay in the case at hand, and no other evidence relating to *the interests and welfare of the public criterion*, sufficient to justify the City proposed movement away from pension payment parity between the DPW and the clerical bargaining units represented by Local Union #662.

Also as previously discussed, *cost of living considerations* are not as important during this period of relatively stable prices, as sometimes has been the case in the past, and even if it were determined to somewhat favor the position of the Employer in these proceedings, it would not justify determinative weight being placed upon this criterion.

Summary of Preliminary Conclusions

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

- (1) These proceedings involve three impasse items: the so-called *just cause language* to be included in the agreement: the *duration of the agreement*, and the *extent and nature of the Employer's pension contribution obligations*.
- (2) 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' are in full agreement that the most important issue is the pension impasse item, in which connection they principally disagree as to the significance of the *non-negotiated status quo ante*.
 - (b) The various statutory criteria have not been comprehensively

prioritized by the Wisconsin Legislature, and their relative importance is normally determined by arbitrators on case-by-case bases, depending upon the facts and circumstances present in each dispute.

- (c) Generally speaking, the relative importance of the statutory criteria are as follows: so-called *external intraindustry comparisons* are normally considered the most important and persuasive of the various criteria in connection with *wage level disputes*; *internal comparisons* are frequently regarded as most important in connection with *certain types of fringe benefits disputes*; even prior to the enactment of the "greatest weight" and the "greater weight" criteria, the *interests and welfare of the public criterion* had been accorded determinative importance only in situations involving inability to pay; the relative importance of the *cost-of-living criterion* varies with the state of the economy, being very important during periods of rapid movement in prices and declining in importance during periods of price stability; and the importance of the *other factors criterion* varies greatly based upon a wide variety of considerations.
 - (d) Wisconsin interest arbitrators will normally closely examine the parties' *past practice* and/or their *negotiations history*, each of which considerations normally fall well within the scope of Section 111.70(4)(cm)(7r)(j) of the Wisconsin Statutes, and they may well be accorded *determinative importance* over other criteria when either or both parties are proposing changes in the *status quo ante*.
- (3) In connection with the *pension contribution impasse item*, the undersigned as determined as follows.
- (a) During an approximate ten year period the Employer has historically paid pension benefits to its clerical employees in *specific dollar amounts*, with such dollar amounts clearly based upon the *annual dollar pension contribution levels agreed upon by the City and Local Union #662 in the preexisting DPW bargaining unit*.
 - (b) The above described past practice of the Employer has clearly and persuasively established three major considerations: *first*, a well established history of annual dollar defined pension contributions paid to clerical employees, rather than pension contributions determined by specified percentages of income; *second*, an equally well established history of increasing the dollar defined pension contributions of clerical employees in tandem with the dollar defined pension contributions negotiated between the City and Local Union #662 for the DPW bargaining unit; and, *third*, the dollar defined pension contribution level for the clerical employees has remained the same during the parties' initial labor contract negotiations which led to these proceedings.
 - (c) When faced with proposed changes in either a negotiated or non-negotiated *status quo ante*, Wisconsin interest arbitrators have required the proponent of change to establish a *very persuasive basis for its proposal* and to *bear the risk of non-persuasion*; the *requisite very persuasive basis for change* has normally been achieved by showing that a *legitimate problem exists which requires attention*, that the *disputed proposal reasonably addresses the problem*, and that the *proposed change is accompanied by*

an appropriate quid pro quo.

- (d) There is no evidence in the record that the above described *long standing past practice* had resulted in the hypothetical potential problems described by the City in arguing its case. The City has thus failed to establish the requisite *very persuasive basis* for its *proposed change in the status quo ante* and, accordingly, arbitral consideration of *the past practice criterion* clearly, persuasively and strongly favors selection of the final offer of the Union in these proceedings!
- (4) The undersigned has determined that consideration of *the just cause language impasse item* does not significantly favor the selection of the final offer of either party.
- (5) The undersigned has determined that while the *three year contract duration proposed by the City is preferable to the two year duration proposed by the Union*, this conclusion is insufficient, alone, to offset the earlier arbitral determination that consideration of the pension contribution impasse item favors selection of the final offer of the Union.
- (6) None of the remaining statutory criteria emphasized by the parties can be assigned determinative weight in the final offer selection process 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, the Impartial Arbitrator has preliminarily concluded that the final offer of Teamsters Local Union #662 is the more appropriate of the two final offers, and it will be ordered implemented by the parties.

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 Teamsters Local Union #662 is the more appropriate of the two final offers before the Arbitrator.
- (2) Accordingly, the final offer of the Union, hereby incorporated by reference into this award, is ordered implemented by the parties.

WILLIAM W. PETRIE
Impartial Arbitrator

December 11, 1999