

**STATE OF WISCONSIN**  
**BEFORE THE ARBITRATOR**

In The Matter Of The Petition Of

**General Teamsters Union Local 662**

To Initiate Interest Arbitration  
Between Said Petitioner and

**Town of Eagle Point**

Case 2, No. 57929  
INT/ARB-8784  
Decision No. 29834-A

**APPEARANCES:**

Attorney Heather Rastorfor, Previant, Goldberg, Uelman, Gratz, Miller & Brueggeman, S.C. 1555 North RiverCenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, on behalf of General Teamsters Union Local 662.

Mr. Jeffrey Bowe, Chairman of the Town Board, Town of Eagle Point, 14827 State Highway 124, Chippewa Falls, Wisconsin 54729, on behalf of the Town of Eagle Point.

General Teamsters Union Local 695, hereinafter referred to as the Union, filed a petition with the Wisconsin Employment Relations Commission to initiate interest arbitration pursuant to Section 111.70(4)(cm) of the Municipal Employment Relations Act with respect to an impasse between it and the Town of Eagle Point, hereinafter referred to as the Town. The undersigned was appointed as arbitrator to hear and decide the dispute, as specified by order of the Wisconsin Employment Relations Commission, dated March 2, 2000. Hearing was held on May 17, 2000 where the Parties were given full opportunity to present evidence and to examine and cross-examine witnesses. No stenographic transcript was made. Post-hearing briefs were exchanged, and the record was closed by July 18, 2000.

**BACKGROUND, ISSUES AND FINAL OFFERS:**

This will be the Parties' first collective bargaining agreement. The bargaining unit consists of two employees, classified as Patrolmen. Prior to forming the bargaining unit, the two employees entered into Employment Contracts with the Town.

During the Parties' negotiations and Fact-Finding they had entered into tentative agreements on a number of issues. However, they reached impasse on certain, remaining issues, as reflected in the Union's Final Offer, attached as Appendix A, and the Town's Final Offer, attached as Appendix B.

Turning first to the Parties' Recall proposals, the language is similar. However, the Union proposes to continue with the previously implemented practice of a minimum of two hours' pay for each Recall occurrence, while the Town proposes a minimum of one hour's pay.

With respect to the Parties' Vacation proposals, much of both proposals reflect the previous implemented practice and the language of the Employment Contract. The Union's proposal provides that employees give 24 hours advance notice of Vacation or personal time, when possible, similar to language in the previous Employment Contract. The Town's proposal requires notice of at least 72 hours. Patrolman Don Bernier testified that it had been the practice for the Town to allow time off with less than 24 hours notice, or even retroactively.

In addition, the Union's proposal states: "Employees are limited to one week Vacation from December 1 until April 1 of the following year." The Town proposes that one-week Vacations must be taken between April 1 and December 1, as in the previous

Employment Contract. However, Patrolman Bernier testified that the Town regularly allowed the Patrolmen to schedule one-week Vacations during those winter months.

The Union also proposes to continue with the right to carry over up to 40 hours of Vacation in extenuating circumstances, while the Town proposes to eliminate any Vacation carry over.

The Union proposes a Wage increase of 2% January 1, 2000, 2% July 1, 2000, and 3% January 1, 2001. The Town proposes 1% for each year of the contract.

The language of each Health Insurance proposal is similar in many respects; however, the Union proposes to continue with the Town's implemented practice that the Town pay 100% of the premium, while the Town proposes that it pay "\$455.00 or Eighty percent (80%) of the premium costs."

The Parties' Management Rights proposals mirror each other in all respects, except that the Town proposes to include the following additional provision: "Township can bring in any personnel or equipment at any time as the Town deems necessary as per Wi. Statutes 60.37."

#### **STATUTORY CRITERIA:**

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.70(4)(cm), Stats., as follows:

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 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.

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 under subd. 7r.

7r. “Other factors considered.” In making any decision under the arbitration procedures authorized in this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment performing similar services.
- e. Comparison of the wages, hours and conditions of employment 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. Comparison of the wages, hours and conditions of employment of the municipal employees, involved in the arbitration proceedings with the wages, hours and conditions of 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 pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. Such other factors, not confined to the foregoing, which are normally or traditionally taken in 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:**

The Union asserts that the proponent of the change in the status quo has the burden of showing that the change is necessary and that some quid pro quo has been offered to the other side in for the change. Here, the Town seeks to change the status quo without meeting such criteria.

With respect to the Health Insurance proposal, the Union argues that its offer retains the status quo. Under the Union's final offer and the status quo, the Town pays 100% of the premium, while the Town's offer reduces its contribution to 80%. However, the Town has offered no justification for the change in the status quo, such as more burdensome Health Insurance costs. Nor has the Town offered a quid pro quo in exchange for its proposal.

Moreover, the Union's final offer on Health Insurance is supported by external comparables. The evidence shows that its proposal more closely reflects Patrolmen in surrounding townships. For example, the Township of Anson requires no deductible and no co-pay for doctor's visits and prescriptions, while the Township of Wheaton's Health Insurance provides for a \$100.00 deductible per person, not to exceed \$300.00 for doctor's visits.

Under the Town's Health Insurance proposal to require the Patrolmen to pay 20% of the premium, there would be a significant drop in Health Insurance benefits and /or total compensation.

The Union contends that its proposal on Recall reflects the status quo of a minimum of two hours' pay, and the Town has not met its burden to justify a change to a minimum one hour's pay.

With respect to the Management Rights proposal, the Union suggests that it relates to the Recall proposal, for the Recall Provision requires that full-time employees must be recalled first, while the Management Rights proposal allows the Town to call in additional employees when necessary.

The Union contends that it has been the long-standing practice to call-in full-time employees first; however, the Town's proposal can be read to allow it to call-in part-time or temporary workers first. The Union argues this would be contrary to the Parties' long standing practice.

The Union maintains that its Vacation proposal reflects the status quo, for it has been the previous practice to approve time off requests with less than 24 hours notice, and even retroactive approval. However, the Town's proposal would change the status quo to 72 hours notice.

The Union's Vacation proposal and the status quo allow for up to 40 hours of carryover of Vacation, the Union maintains; however, that the Town's proposal would eliminate the carryover, without demonstrating a quid pro quo for the change.

The Union's Vacation proposal would allow employees to take one week of Vacation between December 2 and March 31. While the previous Employment Contract

required that one week of Vacation must be scheduled between April 1 and December 1, the practice has been to allow an employee to take a week's Vacation from December through March. The Union points out that clear contract language may be modified by mutual acceptance of a different practice. The Union contends that its proposal merely reflects the previous practice.

Turning to the Wage proposal, the Union argues its proposal is more reasonable, for it more closely reflects external comparables. In 1999 the Town's two Patrolmen received \$13.88/hour, while the top two Patrolmen in Wheaton received \$15.94/hour and \$14.25/hour, respectively. In Lafayette the top two Patrolmen received \$14.17 and \$14.10. Anson paid the same wages as the Town's two Patrolmen. For the year 2000 Wheaton's Patrolmen received 4% and 5% wage increases, while Lafayette's wages increased 5%. However, Anson's wage increase is still under negotiation and, therefore, cannot be considered.

The Town's contention that NSP, a utility company, has subsidized other townships is irrelevant because the Town has not made an inability-to-pay claim. Moreover, this Town's Board Members receive significantly more in salary than comparable Town Board members.

The Union further points out that the wage increases for public works employees for the Villages of Boyd and Caddott also support the Union's proposal.

For the foregoing reasons, the Union submits that its final offer should be selected, in light of the statutory criteria.

**POSITION OF THE TOWN:**

With respect to the Recall proposal, the Town contends that in the past the employees have usually been recalled for a period of twenty minutes to an hour, so a one hour minimum is sufficient. Moreover, if they were recalled for a longer period of time, time and a half would automatically be paid.

As for the Vacation proposal, the Town maintains that it needs 72 hours advance notice to schedule Vacation. In addition, for the past 20 years, it has been the Town policy to not allow Vacation from December 1 to April 1. This is due to: the nature of the job, weather conditions, snow plowing, and keeping the Town running smoothly. The Town also contends that Vacation time has never been carried over in the past, which supports its proposal. However, the Town notes that employees can carryover personal time.

Due to rising Health Insurance costs, the Town contends that its proposal is better, for the Town must “look out” for all taxpayers.

With regard to the Management Rights proposal, the Town contends that it needs the right to bring in personnel, machinery, or whatever is necessary to get the job done. The Town cites Sec. 60.37(1), Stats., which, the Town contends, grants the Town the ability to carry out those responsibilities.

In summary, the Town argues that its Board must answer to all taxpayers residing in the Township. The Board must look out for the entire Town, not just two individuals. The Board tries to keep the residents happy with the job it performs, working for the good of all. The Town believes the employees are receiving above average wages with



very good benefits. The Town contends there were no proven facts of the wage comparisons, and that the submitted wage data was incorrect.

### **DISCUSSION:**

#### **I. SECTION 111.70(4)(CM)7, STATS., THE “GREATEST WEIGHT FACTOR”**

This statutory section requires the arbitrator to consider and give the greatest weight to 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. However, in this case, there are no state laws or directives that limit the Town’s ability to pay for either offer. The Town makes no serious argument that it is constrained by statutory revenue limits such that there would be a serious impact with the selection of the Union’s offer. While the Town does point out that surrounding comparable towns receive some subsidy from NSP, the Town is not barred by statute from funding the Union’s offer, nor does the Town contend that there is an inability to pay for the Union’s offer. Accordingly, the “Greatest Weight Factor” does not control the outcome here.

#### **II. SECTION 111.70(4)(CM)7G., STATS., The “GREATER WEIGHT” FACTOR**

This factor is tied in with the traditional factors and does not stand alone, as the “Greatest Weight” factor does. The “Greater Weight” factor should be considered along with the other factors, but it is given greater weight. The type of data necessary to provide an informed opinion might include employment and household incomes, the ranking of the community among other similar communities and relative quality of life

information. Neither side addressed such criteria specifically, nor do I independently find that those criteria affect the result.

### **PARTIES' FINAL OFFERS:**

As noted above, this will be the Parties' first labor agreement. The Town had instituted certain practices that had developed, and remained essentially unchanged, over the years. Both Patrolmen had also previously signed "Employment Contracts" which mirrored many of the provisions of each of the party's Final Offers.

When parties enter into their first labor agreement, the practices set by the employer have some importance:

The past practice of the parties has sometimes, although infrequently, been considered to be a standard for interest arbitration. This standard is of special significance when parties are engaged in their initial negotiations. Elkouri and Elkouri, How Arbitration Works, (4<sup>th</sup> ed., 1985) at p. 843 (emphasis added).

The party who wishes to depart from the practice must demonstrate why it is necessary to do so. For example, have there been significant changes in the condition or are the parties out of step with surrounding comparables on the issue? The Parties' Final Offers must be reviewed with that in mind when there is a proposed change from the Town's previously implemented practice.

### **A. RECALL**

The Parties' Final Offers on Recall are exactly the same, except the Union proposes two hours' minimum pay at time and a half, while the Town proposes one

hour's pay. The previous Town's practice required two hours' minimum pay; the Union's proposal, therefore, reflects the practice that had been in place.

The Town responds, however, that, because employees in the past were only recalled for twenty minutes to an hour, one hour is sufficient. However, the purpose of minimum pay when an employee is recalled to work is to compensate him or her at a premium because of the inconvenience of being called back outside of the normally scheduled shift. The Town has in the past considered a minimum of two hours' pay to be sufficient compensation for the inconvenience. There has been no demonstration that two hours' pay is extraordinary, burdensome, or otherwise outside the norm, nor do I independently consider two hours' pay to be unusual.<sup>1</sup>

The Town has not demonstrated a need to depart from its previous practice on this issue, and the Union's proposal is, therefore, found more reasonable.

#### B. VACATION

The Union proposes that Vacations be scheduled 24 hours in advance and in writing, if possible, while the Town proposes Vacations be scheduled 72 hours in advance and in writing. The Union's proposal is similar to the previous Employment Contract and the practice. Moreover, Patrolman Bernier explained in unrefuted testimony that it had been the practice for the Town to approve Vacation requests at the last minute, or even retroactively.

While 72 hours may allow the Town more time to plan and staff for an employee's Vacation, the Union's proposal more closely reflects the Town's prior

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<sup>1</sup> Unless otherwise indicated, neither party pointed to comparables to support many of the proposals within their Final Offers; therefore, in those instances comparables have not been addressed in the analysis.

practice. In addition, there has been no evidence that in the past the 24 hours notice would not provide the Town with adequate time to prepare.

Under the prior Employment Contract, “[w]hen taking one full week of vacation it must be scheduled between April 1 and December 1.” However, Bernier, in unrefuted testimony, explained that the practice had been for the Town to allow the Patrolmen to take a week’s Vacation during the winter months, in spite of the Employment Contract language. The Town’s proposal mirrors the language in the Employment Contract, while the Union’s proposal allows a Patrolman up to a maximum of a week’s Vacation during the winter months.

While the testimony on the Town’s practice with respect to allowing one-week Vacations during the winter months differs from the Employment Contract language, the question is not to determine whether the practice applies or the Employment Contract language applies. Rather, it is to determine the Town’s previously administered practice in order to analyze each party’s Final Offer. While the Employment Contract language states otherwise, the unrefuted testimony is that the Town’s practice was to allow one-week Vacations during the winter months, which is what the Parties’ Final Offers must be compared against.

The Union’s proposal on scheduling Vacations of one week during the winter months more closely reflects the Town’s previously implemented practice. The Town has approved the one week Vacation scheduling during winter for many years. It has not been shown that such a practice was burdensome or disruptive of its operations. In addition, it is noted that the Union’s proposal limits such Vacation scheduling to one

employee at a time, which would tend to reduce the adverse impact on the Town's operations.

The Town's previous practice, and the Employment Contract, also allowed for up to 40 hours of Vacation carryover. The Town would propose eliminating all carryover, while the Union's proposal would continue with the previous practice. Again, there has not been a demonstration that the Vacation carryover was burdensome or disruptive of the Town's operations.

I find that the Union's Vacation proposal more closely reflects the Town's practice, and there has been no evidence that the Parties should depart from that. The Union's Vacation proposal is, therefore, found more reasonable.

### C. WAGES

The Union proposes 2% January 1, 2000, 2% July 1, 2000, and 3% on January 1, 2001, while the Town proposes 1% for each year of the contract. In 1999 both Patrolmen earned \$13.88 per hour.

On this issue it is useful to review external comparables. The Union proposed the nearby Towns of Wheaton, Lafayette, and Anson and the Villages of Boyd and Cadott as external comparables. The Town did not respond with alternative comparables.

However, the Town does argue that certain of the external comparables receive subsidies from NSP, a utility company, while the Union responds that, because the Town does not assert an inability-to-pay, any NSP subsidies are irrelevant. I find that the Town's contention of NSP subsidies should be given some consideration, though not controlling, to assist in determining appropriate comparables. However, the Town does

not give more specifics on how the NSP subsidies may have impacted those other municipalities, as compared to the Town here.

The Union's proposed external comparables appear otherwise to be generally similar and appropriate. Therefore, the Union's proposed comparables are adopted here.

In the Town of Wheaton the three Patrolmen earned \$15.94, \$14.25, and \$13.50 per hour in 1999. The highest paid Patrolman received a 4% increase in the year 2000, while the other two Patrolmen each received 5% increases. The three Town of Lafayette Patrolmen earned \$14.17, \$14.10, and \$13.88 in 1999, and they all received a 5% increase for 2000. The Town of Anson Patrolman received \$13.88 for 1999, while the wage increase for the year 2000 is under negotiations. Public Works employees in the Village of Boyd received \$12.94 in 1999, with a 6% increase for 2000. There was no available wage data for Public Works employees for the Village of Cadott for 1999. However, on both July 1, 2000 and January 1, 2001 those Village of Cadott employees received 2% increases, an 8% increase on July 1, 2001, and 2% increases on both January 1, 2002 and July 1, 2002.

That data indicates that in 1999 the Town's Patrolmen received less per hour than most of the external comparable Town Patrolmen, though more than the Village of Boyd Public Works employees. In addition, there was at least a 4% increase for the year 2000 in all the comparables. For the year 2000, then, the Union's proposed increase of 2% January 1, 2000 and 2% July 1, 2000 (with a cost of 3% for the year) more closely reflects the external comparables, and, in fact, it is somewhat less than most of the comparable wage increases. The Town does not explain why 1% is justified, except to

argue that it needs to be fiscally responsible. Accordingly, I find the Union's offer more reasonable for the year 2000 wage increase.

For the 2001 wage increase, the Union proposes 3% while the Town proposes 1%. The only external data is for the Village of Cadott Public Works employees where there will be a 2% increase on January 1, 2001 and an 8% increase on July 1, 2001. The Union concedes that the Village of Cadott is trying to "catch-up" with those lifts. Because there is very little other data on the percentage wage increases for 2001, neither side's proposal is particularly persuasive.

Given that the Union's proposed Wage increase for 2000 is found more favorable while neither Party's wage proposal for the year 2001 is more favorable, I find that the Union's Wage proposal is more persuasive.

#### D. HEALTH INSURANCE

The Union proposes that the Town pay 100% of the health insurance premium, while the Town proposes \$455.00 or 80%.

There is no external comparability data on whether other like-situated employees pay any portion of the monthly premium, though there is some information on deductibles and co-pays. Town of Anson Patrolmen do not pay deductibles or co-pays, while this Town's Patrolmen are only required to make a co-payment of \$15.00 for doctor visits. Town of Lafayette Patrolmen pay \$500 as a deductible, while the Town of Wheaton Patrolmen pay \$100 per person deductible not to exceed \$300 and \$8 co-pay for prescriptions. Given that there is a mix of external comparability data on co-pays and deductibles, such does not strongly favor one side or the other.

Nonetheless, the Town has the burden of demonstrating why the Parties should depart from the Town's previous practice for the Patrolmen to have their Health Insurance premium fully paid. The Town suggests that it must be fiscally responsible. However, no evidence was submitted which would suggest the Town's financial circumstances have substantially worsened or that it cannot or should not otherwise pay the full premium, as it has in the past. Given that the Town has not clearly demonstrated a reason for the change, I find that the Union's proposal on Health Insurance is more reasonable.

#### E. MANAGEMENT RIGHTS

The Parties' Management Rights proposals are identical except that the Town also proposes that the: "Township can bring in any personnel or equipment at any time as the Town deems necessary as per Wi. Statutes 60.37." The Town argues that it needs the right to bring in personnel, machinery, or whatever is necessary to "get the job done," and that Sec. 60.37, Stats., provides the Town with that right. The Union, on the other hand, contends that the Town's Management Rights proposal should be read in light of the Recall proposal and the practice, which allowed full-time employees to be recalled first. According to the Union, the Town's additional Management Rights provision would contradict the Recall proposal and practice.

It is important to note that three of the identical provisions of both Parties' Management Rights proposals address much of the Town's concerns. Paragraph H states: "To take whatever action is necessary to comply with State and Federal law." Paragraph I states: "To determine the methods, means and personnel by which Township



operations are to be conducted.” Paragraph J states: “To take whatever action is necessary to carry out the functions of the Township in situations of emergency.” Those provisions give Management wide leeway in carrying out its responsibilities, and, when read in concert, will allow the Town to continue to carry out its responsibilities under Sec. 60.37, Stats. The Town’s proposal is thus somewhat redundant, and, therefore, the Union’s proposal is found to be slightly more favorable.

### **CONCLUSION:**

As discussed above, the Town’s Final Offer departs from its previously implemented practice on many issues; however, there has been no demonstration that there needs to be changes in those areas. The Union’s Final Offer, on the other hand, reflects many of the Town’s previously implemented practices and the Union’s Wage proposal more closely reflects comparable Wage increases.

Therefore, when considering the foregoing and in light of the relevant statutory criteria, I find the Union’s Final Offer is preferable. Accordingly,

### **AWARD**

The Union’s Final Offer is adopted as the Award in this proceeding and shall be incorporated into the Parties’ 2000-2001 collective bargaining agreement.

Dated this 31<sup>st</sup> day of July 2000 in Madison, Wisconsin.

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Andrew M. Roberts