STATE OF WISCONSIN

Before the Interest Arbitrator

In the Matter of the Petition **of** **International Brotherhood of Electrical Workers Local 2150** **For Final and Binding Arbitration Involving Personnel in the Employ of Village of Gresham (Utility)**	**Case 11** **No. 58828 INT/ARB-9021** **Decision No. 29994-A**

APPEARANCES

For the Union:

Naomi Soldon, Attorney

For the County:

Robert W. Burns, Attorney

PROCEEDINGS

On November 6, 2000 the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to Section 111.70 (4)(cm) 6. & 7. of the

Municipal Employment Relations Act, to resolve an impasse existing between International Brotherhood of Electrical Workers Local 2150, hereinafter referred to as the Union, and Village of Gresham (Utility), hereinafter referred to as the Employer.

The hearing was held on February 21, 2001 in Gresham, Wisconsin. The Parties did not request mediation services. At this hearing the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses and to make such arguments as were deemed pertinent. The Parties stipulated that all provisions of the applicable statutes had been complied with and that the matter was properly before the Arbitrator. Briefs were filed in this case and the record was closed on June 29, 2001 subsequent to receiving the final reply briefs.

FINAL OFFERS

The Arbitrator will note that Items 1 through 5 on the Union Final Offer are the same as the comparable items on the Village of Gresham Utility's Final Offer and, therefore, those will be made part of the tentative agreements in this matter.

OPEN ITEMS

UNION	EMPLOYER
Wages - Journeymen and Linemen: **1/1/00: $.30 plus 3%** **1/1/01: 2%** **7/1/01: 2%**	**Wages:** **1/1/00: 3%** **1/1/01: 3.25%**
Wages - Journeymen, Linemen & W/S: **1/1/00: $.30 plus 3%** **1/1/01: 2%** **7/1/01: 2%**	
All Others: **1/1/00: 3%** **1/1/01: 2%** **7/1/01: 2%**	
Article X, New Sec 5 - Clothing Allowance: **Status Quo**	**Article X, New Sec 5 - Clothing Allowance:** **$275 in the initial year of employment towards the purchase toward utility approved clothing and personal protection items.** **Subsequent years - $175 on the anniversary date**

STATUTORY CRITERIA

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

7g. "Factor given greater weight." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

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

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and 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 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 pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or

otherwise between the parties, in the public service or in private employment.

UNION POSITION

The following represents the arguments and contentions made on behalf of the Union:

After reaching an impasse, there are two remaining issues for the Arbitrator's determination: wages & clothing allowance. The Wisconsin statutes set forth the criteria arbitrators must apply in selecting a final offer.

The Union's proposed comparables are more appropriate than the Employer's. The Union's comparables mirror those used by Arbitrator Rice in a 1992 interest arbitration for this bargaining unit. Arbitrator Rice found that Algoma, Eagle River, Florence, Oconto Falls, New London, Clintonville and Shawano are the appropriate comparables. Arbitrators consistently hold that comparables identified in prior interest arbitration awards should not be changed without strong evidence suggesting that they are no longer appropriate. In addition, there is no basis for dividing Arbitrator Rice's comparables into primary and secondary groups. Arbitrator Rice in his decision makes no such division. In fact, some included in Utility's proposed primary comparable group are located some 75 miles away from the Employer and cannot be considered as geographically proximate or having similar

economic conditions. Arbitrator Rice further recognized that employees of this Utility are in the same labor market as those of Shawano and New London. Municipalities in the Utility's alternative secondary group are not appropriate comparables. The Utility is attempting to add Cuba City, City of Cornell, Elroy and Whitehall in an alternative secondary group of comparables. These cities, while similar in population, range from 143 to 245 miles from the Village of Gresham. Arbitrators consistently hold that geographic proximity must be considered in determining whether a municipality is an appropriate comparable. The Utility failed to demonstrate any factors that Arbitrator Rice's comparables are no longer appropriate. Therefore, the original comparables should be utilized by this Arbitrator.

The Union's wage proposal is more reasonable and equitable than the Village's. The significant disparity between Gresham linemen wages and those of comparable municipalities justifies the $.30 wage adjustment proposal. The average hourly wage of a journeyman/lineman in the comparable communities in 1999 was $17.93 per hour, compared to $17.05 for journeymen/linemen and $17.44 for the water and sewerage certified linemen. Therefore, the Union's proposal for a $.30 per hour wage adjustment is a modest attempt to make up some ground and allow the employees in this unit to catch up to their colleagues in comparable municipalities. The previous wage adjustment shows that the Utility recognizes that its wages are not sufficient. During the previous contract, the Parties began the process of catching up. Even so, the Gresham linemen wages will still lag behind those of the comparables. Therefore, this $.30 per hour adjustment must be chosen as the more reasonable and equitable proposal.

The Union's proposed percentage increases better serve to bring the Utility's wages in line with those of comparable municipalities. Only the $.30 catch up and the Union's proposed percentage increases diminish some of the wage disparity between Gresham and the comparables. The average 2000 wage of the Union's comparables is $18.53. Under the Union's final offer journeymen/linemen would earn $17.87 and water and sewerage linemen would earn $18.27. This would bring Gresham linemen on a par with comparable wages. The Utility's final offer would put journeymen/linemen in the 3rd lowest out of eight utilities.

Under the Utility's proposal for 2001 linemen fare no better, leaving them $1.36 behind the comparables' average. The Union's split offer in the 2nd year is an attempt to bring the linemen's wages closer to the comparables while at the same time limiting the Utility's costs.

The Utility argued that wage increases would require another rate increase. This was rejected by Arbitrator Rice in the 1992 interest arbitration finding that potential rate increases do not justify paying employees less than they deserve. The fact that the Utility is currently undertaking significant construction costs should not be used to weigh in favor of the Utility's final offer. The Utility admitted that construction contractors charge as much as $50 per hour. It is hard to comprehend that the Utility is willing to pay so much to outside contractors, but resists a fair wage adjustment for its own employees.

The Union's final offer more adequately compensates the billing clerk position which

is currently drastically behind the comparables. The wages at the end of the contract will be $9.73 per hour compared to $10.65 to $14.33 among the comparables.

The consumer price index figures support the Union's final offer. The cost of living rose 3.4% from 1999 to 2000. The Utility's offer of 3% would not sufficiently compensate employees for increases in living expenses. A similar increase in 2001 compared to the Utility's final offer would again fail to maintain the employees' standard of living.

The Utility's proposed clothing allowance would not fully compensate employees for required clothing and constitutes an attempt to institute a uniform policy without bargaining with the Union. Currently, the Employer is required to furnish all necessary safety equipment. The proposal of the Employer would not compensate employees for the required clothing expenses. The Utility should not be allowed to unilaterally implement a uniform policy through its proposal. A mandatory uniform requirement clearly constitutes a mandatory subject of bargaining. The Utility and Union have not bargained over any mandatory uniform requirements. Interest arbitration is not the appropriate or lawful way to accomplish such a result. In addition, the Utility's proposal would not sufficiently compensate employees for their required uniforms.

The Union also responded to the Employer's initial brief as follows:

The Utility's economic condition does not justify the Employer's final offer under the

greater weight standard. The need to bring Utility equipment and system into compliance with industry standards is not unique to the Gresham Utility. It is a fact of life when operations such as this are regulated by government and industry standards. This does not, however, justify the suppression of wages of the employees who assist in the operation of the facility. A rate increase would be required under either offer. Arbitrator Rice noted in his 1992 award that the Utility's desire to avoid frequent rate increases does not justify paying employees less than comparable wages.

The Utility failed to justify its departure from the comparables established in the prior award. Arbitrators consistently refuse to create primary and secondary comparables where previously there were no such divisions. Arbitrator Rice did not make such distinctions and the comparables should not be altered in this case. The character of the Shawano utility has not changed since the Rice award. There has been no significant change in conditions to justify affording less consideration to the wages of Shawano employees. The comparables must be considered with equal weight. The Utility's addition of an alternative secondary group of comparables must likewise be rejected. There is a recognized need for stability in the bargaining relationship. Arbitrators have consistently rejected attempts to change or add to comparability groups.

The comparables and other criteria support the Union's final offer. The split increase in the prior agreement does not justify the Utility's position. The Utility's effort to bring wages closer to the area in the last negotiations should be considered by the Arbitrator, so

must the Union's effort be considered, as well. It is well recognized that employees are not necessarily entitled to catch up in one year or with a single lump increase. The Union recognized this concept in the prior Agreement and chose to work toward catching up to the wages of comparable municipalities through successive contracts as opposed to seeking a single lump increase. This does not mean that further increases, which are warranted by the comparables, should be rejected.

The need for catch up in wages outweighs the Utility's offer of comparability to area settlements which are cents per hour increases. Both the Utility and the Union's final offers are competitive with the area settlements. The wages of Gresham linemen still fall behind those of comparable municipalities. Likewise, the Utility's low turnover rate does not justify its position. Simply because employees have remained loyal is not a basis upon which to conclude their wages are appropriate.

The Union's final offer appropriately places the Gresham linemen wages in the middle of the relevant comparables. This would be up from a low ranking using either set of comparables. The Union would note that even the Utility's proposal would move employees up in the ranking with other comparables. The Employer has recognized that upward movement is in order.

The health insurance comparisons do not favor the Utility. Even including health care contributions, the Gresham employees fall behind comparable communities. The record

shows that, based on the Employer's own numbers, the Gresham insurance costs are comparable to those of other municipalities.

Finally, the Utility's clothing allowance proposal offers little more than what the contract already provides. It is an attempt to implement a uniform policy without bargaining it with the Union. The records show that the Utility's clothing allowance provides little additional benefit over that to which the employees are already entitled and, therefore, the status quo is the most reasonable and equitable and should be selected.

For all of the foregoing reasons and on the record on the whole, the Arbitrator should select the Union's final offer as it is more reasonable and equitable than the Utility's.

EMPLOYER POSITION

The following represents the arguments and contentions made on behalf of the Employer:

The economic condition of the Employer must be considered when determining which offer is most reasonable. The Wisconsin legislature has provided that the greatest weight will be given to any state law or directive lawfully issued and, also, give greater weight on the

economic conditions in the jurisdiction of the municipal employer. The general manager of the Utility testified as to the financial situation of the Employer. The financial constraints placed on the Employer are issues which come into play with respect to the first two criteria under the statutes.

The Employer's comparables capture the criteria considered by many arbitrators. The Employer proposes as primary comparables Algoma, Eagle River, Florence and Oconto Falls along with secondary comparables consisting of Clintonville, New London and Shawano. The Employer also proposed an alternative secondary group consisting of Cuba City, Cornell, Elroy and Whitehall. These are utilities not referred to by either Party in the prior arbitration but which are of similar size to Gresham. These proposals are based on the following factors: location, population and geographical size, total property value, per capita property value, per capita income and similar labor market. The primary utilities are considered most comparable by Arbitrator Rice, identical in size and service with a similar number of customers. The secondary pool is considerably larger than Gresham, however, it consists of utilities that are geographically proximate. The alternative secondary group is the most similar in size to Gresham with respect to population, number of employees and customers served, although three are non-union. It has been recognized that non-union comparables are a valid basis for comparison. The record shows that Shawano is a less appropriate comparable in that the bulk of duties consists of electrical projects, whereas in Gresham employees perform other non-electrical duties. It is the Employer's position that limited weight be placed on the secondary group.

The Employer must prevail on the other criteria to be considered by the Arbitrator. The Arbitrator should note that the Parties agreed to a split wage increase in the last round of negotiations. Arbitrators have found that this can be considered with respect to the current situation. The Employer's wage proposal is comparable with area settlements based on a percentage basis. Actual cents per hour received by employees under the Employer's proposal are comparable to those paid by comparable utilities. With the exception of either extraordinary catch up or insurance concessions, the Employer's wage increases in its offer here are consistent with those established by other municipalities. Wage increases paid by other employers in the community are similar to those proposed by the Employer. In addition, the Employer's wage rates are competitive as evidenced by the low turnover of staff. The Union was unable to make a case that Gresham suffers competitively in employee retention. There was no evidence showing that employees were leaving the Employer due to inadequate wages or fringe benefits.

Wages paid by the Employer are competitive. The Gresham employees are clearly not the lowest paid among the comparables, nor do they suffer wages which are below the average. In 1999 Gresham wages were higher than three of the eleven municipalities listed by the Employer; but in 2000 and 2001 its wages were higher than five of the comparables. The wage leaders have consistently been Clintonville, New London and Shawano, but these utilities are between eight and fifteen times the size of Gresham. The Employer has made significant strides in the past and cannot be expected to continually offer higher increases to achieve the

first place ranking among comparable utilities. The Employer would also note that employee health insurance contributions at Gresham are significantly lower than other municipalities. This is especially significant give the recent escalation in health insurance costs.

Total package percentages are relevant in this dispute. The overall compensation factor strongly supports the Employer's offer. Many arbitrators have found that fringe benefit costs can be considered as offsetting for lower wages.

The Employer's offer is above the cost of living, particularly when considering the total package costs. Employees will receive wage and fringe benefit gains in excess of the cost of living under the Employer's offer.

The Employer's offer provides additional benefits to the employees. Both Parties have proposed to increase the number of holidays by one. The clothing allowance is not as restrictive as the Union implies. Even in the current situation, coupled with the existing language, the Employer's offer should be viewed favorably by the Arbitrator.

The Employer also had the opportunity to respond to the Union's initial brief in this matter and responded as follows:

Comparables were not clearly established by Arbitrator Rice. The Employer agrees that once a set of comparables has been identified, the group should not be changed unless

strong evidence suggests to the contrary. The Employer's primary comparables are those identified directly by the Arbitrator. Thereafter, he merely stated that he would "consider larger municipalities of New London, Clintonville and Shawano." He also indicated he would consider wage rates of other nearby municipal utilities in comparable groups A and B. Instead of combining all seven, the Employer suggested that the four smaller utilities should be combined and the larger ones should be granted some consideration. The Employer also provided a secondary set of utilities to give the Arbitrator a broader understanding of pay rates.

The ultimate goal of the Union is to increase wages so that they are equal to those paid by large municipalities. Contrary to the Union's arguments, Gresham's wages are very similar to those paid by Algoma, Eagle River and Florence. New London, Clintonville and Shawano's wages are significantly higher. In addition, the Union failed to acknowledge efforts made by the Parties during the last round of negotiations. The Union's position with respect to the billing clerk is questionable. The Employer would note that Gresham's billing clerk is part time and those at other municipalities are full time. This alone would play a role in determining appropriate wage rates. Finally, the Union has failed to consider the cost of benefits in its consumer price index argument.

With respect to the clothing allowance, the Union has misinterpreted the Employer's proposal. The current language in the contract states that the Employer is to furnish "all rubber hats, coats, boots and gloves and all necessary safety equipment for the employees."

The Employer is not saying it will no longer purchase these items. The Employer's offer clearly states on its face that it is providing dollars in addition to those currently provided under the preceding language in Article X. The employees presently purchase wear items and are not reimbursed for that clothing. The employees would still receive the traditional items, however, they would now be reimbursed for additional items. The Employer's proposed language would actually decrease the out-of-pocket expenses for clothing.

The Arbitrator is bound by the statutory criteria in selecting the final offer which is more reasonable. It is clear that the Employer's offer must be seen as the more reasonable of the two and closer to the often stated arbitrable goal of achieving what the Parties might have arrived at on their own. Based on the above, the Employer respectfully requests that the Arbitrator award its offer as the more reasonable of the two at issue in this matter.

DISCUSSION AND OPINION

The Arbitrator's role in interest arbitration in substantially different than in a grievance arbitration. Interest arbitration is the substitute for a test of economic power between the Parties. The Wisconsin legislature determined that it would be in the best interest of the citizens of the state of Wisconsin to substitute interest arbitration for strike/lockout activities. In an interest arbitration the Arbitrator must determine not only what the Parties

would have agreed to but also what they should have agreed to and, therefore, it falls to the Arbitrator to determine what is fair and equitable in this circumstance. The legislature has provided guidance for the Arbitrator within the statutory criteria that are reproduced above. These prevent him from fashioning a remedy of his choosing. He must by statute choose that entire proposal which he finds most equitable under all the circumstances of the case. The Arbitrator must base his decision on the factors above with special weight being given to the first two factors.

With respect to the comparables, any proposed change in the comparables that were determined by Arbitrator Rice in his 1992 decision would be a deviation from the status quo, such deviation is not taken lightly. The purpose for this is to provide some consistency and continuity in the Collective Bargaining process. In his 1992 decision Arbitrator Rice at page 4 states "The Arbitrator agrees that the Employer's comparable group C is appropriate for comparative purposes." Comparable C consisted of Algoma, Eagle River, Florence and Oconto Falls. Further in that same paragraph Arbitrator Rice went on to say "Accordingly, while the Arbitrator finds comparable group C to be appropriate, he must consider wage rates paid by Shawano, New London, Clintonville and other nearby municipal utilities in comparable groups A and B." It is clear to this Arbitrator that Arbitrator Rice was setting up a primary and secondary comparable system, the primary comparables being group C, as noted above, and secondary, but important in consideration, would be the three larger communities noted. There is nothing contained in the record of this case that would allow this Arbitrator to approve a deviation from the status quo as the proponent of any change must

fully justify its position providing strong reasons and a proven need. That showing has not been made and, therefore, the comparables remain as determined by Arbitrator Rice resulting from his 1992 decision.

With respect to the two proposals on which the Parties disagree, clothing allowance and wages, the clothing allowance is the much easier item. In its reply brief, the Employer has clarified for the Union and for the Arbitrator its clothing proposal. The Employer intends not to substitute for current language where the Employer provides rubber hats, coats, boots and gloves and all other necessary safety equipment. The clothing allowance would apply to regular wear items not included in the above. The Union argued that the Employer and the Union have not bargained over clothing requirements and, while that would certainly be a preferred outcome, the Employer has no special obligation to bargain uniform requirements particularly under the circumstances where it has agreed to make substantial contributions toward these items. Currently, the Gresham employees are required to provide and maintain their own wear items. Under the Employer's proposal these items would be substantially reimbursed, therefore, in this Arbitrator's opinion providing an economic benefit to the bargaining unit. In any event, this is a rather small item in the great scheme of things with respect to this Collective Bargaining Agreement. All in all, the Arbitrator finds that the statutory criteria strongly favor the Employer's position with respect to clothing allowance.

The main element of this interest arbitration, however, is wage proposals. For this Arbitrator the actual pay received by the employees of the Utility is the important comparative

element. Likewise, the fact that the rates are split under the Union proposal in the second year of the contract does not in any way convince this Arbitrator that that makes the Union's proposal any more palatable. The fact is that during the last six months of the Collective Bargaining Agreement the journeymen/linemen would be making $18.59 per hour. The journeymen/linemen water and sewage would be making $19.01, and the part-time billing clerk would be making $9.73 under the Union's proposal. Under the Employer's proposal the journeymen/linemen would be making $18.09. The journeymen/linemen water and sewage would be making $18.50, and the billing clerk would be making $9.63. Working backwards, the billing clerk would be making significantly below the comparables, however, as the Employer has pointed out, this is a part-time position and generally part-time employees are paid at a lower rate. With respect to the journeymen/linemen and the primary comparables, the Village of Gresham would fall within the middle range of those comparables. With respect to the secondary comparables under both proposals, the linemen would be well behind. The Arbitrator would note for the record that so are the other primary comparables. There are a number of reasons for this, chief among them is that the utilities at New London, Clintonville and Shawano are much larger facilities, serve a much larger customer base, and can spread their costs over a much larger set of facilities and customer invoices. There are economic benefits to these larger facilities which would not accrue to a utility of the small size of the Gresham Utility.

The above is coupled with the fact that the Arbitrator is charged by the statute to give greater weight to the economic conditions in the jurisdiction of the municipal employer. The

facts are that the Employer made significant arguments as to its economic situation. In addition, this Arbitrator, as other arbitrators have found in Wisconsin, feels that the cost of living is best determined by the voluntary economic settlements of the comparables. Finally the arguments made with respect to the total economic package are well taken. Given the above, while the Union has made a case for adjustments, the amounts proposed exceed what would fully meet the statutory criteria. The Arbitrator would, therefore, find that the Employer's proposal would most closely meet the statutory criteria.

AWARD

On the basis of the foregoing and the record as a whole, and after full consideration of each of the statutory criteria, the undersigned has concluded that the final offer of the Employer is the more reasonable proposal before the Arbitrator and directs that it, along with the stipulations reached in bargaining, constitute the agreement between the Parties.

Signed at Oconomowoc, Wisconsin this 24th day of July, 2001.

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Raymond E. McAlpin, Arbitrator