BEFORE THE ARBITRATOR

In the Matter of the Petition of	Case 6 No. 59272 INT/ARB-9098
GENERAL TEAMSTERS UNION, LOCAL 662,	Dec. No. 30177-A
To Initiate Arbitration Between Said Petitioner and	Heard: 11/5/01 Record Closed: 3/5/02 Award Issued: 4/17/02
THE CITY OF MOSINEE (DEPARTMENT OF PUBLIC WORKS)	Sherwood Malamud Arbitrator

APPEARANCES:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by Jill M. Hartley, Suite 202, 1555 North RiverCenter Drive, Milwaukee, Wisconsin 53212, appearing on behalf of the Union.

Ruder, Ware & Michler, S.C., by Dean R. Dietrich, 500 Third Street, Suite 600, P.O. Box 8050, Wausau, Wisconsin 54402-8050, appearing on behalf of the Municipal Employer.

ARBITRATION AWARD

Jurisdiction of Arbitrator

On July 23, 2001, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Arbitrator to issue a final and binding Award pursuant to Sec. 111.70(4)(cm)6.c., Wis. Stats., to determine several issues outstanding in the negotiations of a collective bargaining agreement for calendar years 2000 and 2001 between General Teamsters Union Local 662, hereinafter the Union, and the City of Mosinee, hereinafter the City or the Employer. Hearing in the matter was held on November 5, 2001 in the Mosinee City Hall in Mosinee, Wisconsin, at which time the parties presented testimony and documentary evidence. Original and reply briefs were received and exchanged through the Arbitrator by March 5, 2002, at which time the record in the matter was closed. Upon reviewing the evidence, testimony, and arguments presented by the parties, and upon consideration of the criteria set forth in Sec. 111.70(4)(cm)7., 7.g., 7.r., a.-j., Wis. Stats., to the issues in dispute herein, the Arbitrator renders the following Award.

THE ISSUES IN DISPUTE

I. Call-in Pay

The Union proposes to clarify the language of Article 13, Section 5, by amending the call-in provision, as follows. Should the Employer notify an employee while working during a call-in of a need for the employee to return to work a second time, then only one two-hour call-in is paid. Otherwise, the Union proposes to leave the language as is. Two hours pay at straight time rates and time and one-half for all hours worked.

The Employer proposes to delete the payment of the call-in pay of two hours at the straight-time rate for each call-in. The Employer proposes that an employee called-in receive a minimum of two hours pay at time and a half.

II. Vacation

The Union proposes the following changes to the vacation schedule applicable to employees hired after January 1, 1986:

Years of Continuous Service	Present Vacation Schedule	Union's Proposed Schedule	Union's Proposed Years of Continuous Service
1	1 week	6 days	1 year
2	2 weeks	11 days	2 years
7	3 weeks	16 days	6 years
14	4 weeks	21 days	13 years
20	5 weeks	22 days	14 years
		23 days	16 years
		24 days	18 years
		26 days	20 years

The City proposes that the current vacation schedules remain unchanged.

III. Sick Leave Payout:

The Union proposes the following new language.

> If death of the employee would occur, the employee's estate would receive the payout on the employee's unused sick leave bank.

The City proposes new language, here, as well:

> Accrued sick leave for the last five (5) years of employment will be paid to the surviving members of the family, if the employee is killed during hours of employment with the City.

IV. Holidays

The Union proposes to continue the schedule of 12 holidays for the term of the 2000-2001 Agreement.

The City proposes to increase the number of holidays from 12 to 13. The City proposes this increase in benefits as a quid pro quo for its proposal to modify and reduce the amount paid to employees for call-in.

STATUTORY CRITERIA

The criteria to be used to resolve this dispute are found in Sec. 111.70(4)(cm)7, Wis. 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. 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.

e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes, 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.

DISCUSSION

Introduction

There are two bargaining units of employees in the City of Mosinee. This unit of nine DPW employees in the Street Department, Water and Wastewater Departments comprise the unit represented by Teamsters Local 662. In addition, the law enforcement personnel of the City, approximately six employees, are represented by a different Union. This is the first interest arbitration proceeding between the Employer and the representative of this unit of employees. The parties do not agree on the list of communities to which the City of Mosinee's DPW unit is to be compared and contrasted.

The Union suggests the following list of ten comparables: Schofield, Weston, Nekoosa, Neillsville, Merrill, Medford, Spencer, Plover, Rothschild,

and the Town of Hull.

The City presents four of the communities proposed by the Union as comparables, namely: Medford, Rothschild, Schofield, and Spencer. The City proposes an additional three communities as comparable to Mosinee: Antigo, Colby, and Kronenwetter.

In its brief, the City quotes Arbitrator Brotslaw in his award in Oconto County (Professionals), 29086-A (2/98) who observed that:

> The selection of appropriate comparables for the purpose of interest arbitration is a complex, important responsibility, which every arbitrator undertakes with a certain degree of trepidation, because of the inherently unscientific nature of the process. There are objective criteria to consider and, under most circumstances, the parties make an honest effort to select comparables which meet the usual standards of comparability, such as population, per capita income, levels of employment and unemployment, full property values, total property taxes collected, the number of employees in the bargaining units being compared, etc.

Indeed, long after the parties have adjusted to the outcome of the Arbitrator's determination of the matters in dispute, the determination of the communities that serve as the comparability pool may remain and impact the parties' bargaining relationship. Since this is the first interest arbitration between these parties and since the wage levels and the rate of increase of those wage levels are **not** at issue, here, the Arbitrator finds that this interest arbitration dispute may be determined without establishing a definitive comparability pool. This Arbitrator makes no determination of the communities that should serve as a comparable to the City of Mosinee and its unit of Street, Water and Wastewater Department employees.

The Arbitrator addresses the assumption made by both the City and the Union that the voluntary agreement reached by the City with its law enforcement unit for calendar years 2000 and 2001 on the matter of call-in

pay, vacation, and sick leave payout are relevant to the determination of this dispute. In their arguments, both the City and the Union assert that the police unit should serve as an internal comparable in support of their respective positions. However, both the City and the Union argue that the law enforcement unit should not serve as an internal comparable when the police contract does not support their respective positions.

The City argues that its proposal on call-in pay and sick leave payout mirrors the language found in the police contract. The Union counters that the City has failed to show any relationship or pattern extant between the call-in pay provision in place in the DPW unit and in the police agreement.

There is no showing that the call-ins occur in the DPW unit with the same frequency as in the police department. There is no evidence of the length of a typical call-in in each of the two departments nor is there any evidence in this record concerning the extent to which employees in the DPW unit or police officers in the police unit must and do make themselves available for call-in. The only record evidence of any relationship between call-in in these two units is that a call-in provision exists in each of the two agreements that expired in 1999. The provision in the police unit differed from that in DPW. The police did not receive two hours at the straight time rate for each call-in as afforded to DPW employees in their expired Agreement. On the other hand, the police contract provides for the payment of two hours pay at the overtime rate if a mandated court appearance is canceled after 4 p.m. on the day preceding the mandated appearance. No such provision appears in the DPW unit contract. The Arbitrator assumes that mandated court appearances by Street Department employees may be a rare occurrence. The two call-in provisions, the one in the police agreement and the one in the DPW agreement, differ and are responsive to the day-to-day operations of the departments governed by the respective contracts. The Arbitrator concludes that there is no reason to determine the call-in pay issue on the basis of the call-in language found in the police Agreement.

The Union's vacation proposal is premised on its assertion that the vacation schedules in the law enforcement agreement and the DPW unit

mirror each other. The Union maintains that it proposes to improve the vacation schedule and the structure of the vacation schedule based upon the City's and the police unit's agreement in their 2000-2001 contract. It is the City that argues that there is no basis for comparing the two units. Police officers in the City of Mosinee work a continuous six straight days and three day off, a 6-3 schedule. DPW employees work a standard five day, Monday through Friday work week with weekends off. For that reason, a reference in the police contract to a week's vacation results in six vacation days. The reference to a week's vacation in the DPW unit results in five days off. In part, the Union proposes to change the frame of reference from weeks to days to address the different work schedules in the two units. Here, again, there is no basis for comparing vacation benefits received by law enforcement personnel to that received by DPW employees.

Both the Union and the City propose a new benefit which focuses on sick leave payout. The Employer proposes to severely limit the impact of its proposal to the payout of the sick leave bank accumulated by an employee in the last five years prior to his death. However, to be eligible to receive this sick leave payout under the City's proposal, the employee must be killed during the hours of employment. The risk of death during working hours may be greater in a law enforcement unit than in a DPW unit. Here, again, the differing circumstances belie the reliability of the assumption that the sick leave payout for DPW employees should be worded and administered in the same fashion as it is for law enforcement personnel.

Finally, the last change that is the subject of this arbitration proceeding is one proposed by the City. It offers to increase the number of holidays from 12 to 13. In a law enforcement unit where employees work the holiday, the increase in the number of holidays generates additional income. In the DPW unit where employees take additional time off on holidays, an increase in the number of holidays increases the amount of time off without any impact on a DPW employee's income.

The Arbitrator has demonstrated how on each of the issues in dispute, the matter at issue has a substantially different impact on the police and

DPW units. Certainly, it is appropriate to compare the percentage increase in wages offered to the two units. The above analysis demonstrates that there is little basis for an internal comparison between the two units on call-in, vacation, holiday and sick leave payout. In the discussion that follows, the Arbitrator incorporates the arguments of the parties in his examination of each of these proposals.

CALL-IN PAY

As noted above, the City maintains that its proposal on call-in pay is consistent with the language agreed to by the City with its law enforcement unit. In the above discussion, the Arbitrator notes the fallacy underlying the assumption that any of the four issues in dispute here should be determined on the basis of the language or scope of benefits received by law enforcement personnel.

The City maintains that there is a need for its proposal. Should the state of Wisconsin eliminate shared revenue, its proposal begins to reduce the Employer's costs. As of the writing of this Award, the legislature has not eliminated shared revenue. If it did, then that fact would be subject to receipt of the greatest weight if the collective bargaining agreement at issue were for 2002 or 2003. However, the contract in dispute is the 2000-2001 Agreement. There is no indication that the outcome of this Award will have any impact at all on the City's revenues during the period in question. The Employer failed to demonstrate any need to change the call-in benefit.

In the application of the such other factors criterion, the Arbitrator considers whether there is a need for a change and, if there is a need for such change, whether the party proposing the change offers a quid pro quo for the change. Here, the City offers a quid pro quo. It proposes to lower the income generated by an income-producing benefit in exchange for additional time off for each employee in the unit. The Arbitrator concludes that the City's proposal fails because of the City's inability to demonstrate the need for this change.

The scope of the change is not clearly defined in the record. The Union introduced the testimony of the most senior employee in the unit who testified that he is called in approximately 20 times per year. The City notes the total cost of call-in pay suggests there are fewer call-ins. From the annual costs of call-in pay, the Arbitrator infers that there may be unit wide 20 or more call-ins in a particular year.

Under the City's proposal call-in pay is reduced; it is not eliminated. Employees would still receive a minimum of two hour's pay at overtime rates. The difference is the additional two hours pay at regular rates that employees would receive under the current language, in addition to the pay at overtime rates for hours worked, results in a difference of approximately $34 per call-in when the employee works at least two hours (approximately $49 vs. $83 for a Street Department employee). Employer Exhibit 5A, the City's costing summary, indicates that the total cost of call-in pay in 1999 was $2,708.00. It projects an increase under the Agreement of approximately $400+ dollars to $3,145.47 for call-in pay. Since the parties reached agreement on the major monetary issues, the City's costing does not differentiate between the Employer's and the Union's offers on the call-in issue. The Arbitrator estimates that the cost of the Employer's proposal unit wide for a year may range from $600.00 to no more than $1,000.00, under one-tenth of one percent in the package cost of the 2000-2001 Agreement. This analysis bolsters the Arbitrator's conclusion that the Employer has shown no basis or need for the change.

The Arbitrator finds that the application of the interest and welfare of the public criterion to the City's proposal to eliminate the two hours straight time pay for each call-in has a potential negative impact. There is no evidence to the extent to which employees must make themselves available for call-in. The elimination of approximately $34.00 in pay for each call-in may or may not impact the availability of DPW employees for a call-in. To the extent that it negatively impacts employee availability, it does not serve the interest and welfare of the public.

In the introduction section of this Award, the Arbitrator noted that he

need not make a determination of the comparability pool. If all the comparables proposed both by the City and the Union are considered, then five of these comparables provide a call-in benefit consistent with the City's proposed change. However, four maintain the call-in benefit as it appears in the expired agreement between these parties. Comparability provides some slight support to the City's proposal. (The Village of Kronenwetter pays two-and-a-half times the rate for call-in. The Arbitrator considered that benefit consistent with the Union's offer to maintain the status quo, in this case.)

The criterion overall compensation does not serve to distinguish between the offers of the parties nor do any of the other statutory criteria serve as a basis to favor one offer over the other. The Union's proposal to amend the current language to establish that only one call-in premium, two hour's pay at straight-time rates, be paid when a second call-in is scheduled while the employee is at work. The Employer does not dispute that the Union's proposed change serves to clarify the current language. If the Employer's proposal were adopted, there would be no need to clarify the language.

The Arbitrator concludes that the weight of the statutory factors, particularly the such other factors criterion, the interest and welfare of the public far outweigh the comparability evidence which provides slight support for the City's proposal. If call-in and the City's proposal of a quid pro quo of an additional holiday were the only issues in dispute herein, the Arbitrator would select the Union's final offer for inclusion in a successor agreement.

VACATION

The Union proposes to amend the vacation schedule for employees hired after January 1, 1986. Four of the nine unit employees hired prior to January 1, 1986 receive a vacation benefit which tops out at seven weeks after thirty years of service. These senior employees receive six weeks after twenty-five years of service, and five weeks after eighteen years of service. Those employees hired after January 1, 1986, receive four weeks after fourteen years and five weeks after twenty years. They top out at five weeks

of vacation. The City proposes to retain the status quo. The vacation schedules for employees hired prior to and after January 1, 1986, would continue in the 2000-2001 Agreement as they appear in the expired agreement. The City challenges the Union's argument that the vacation schedules of the two units mirror one another. No police officer will obtain 7 weeks vacation under the schedule the parties agreed to for 2000-2001. Yet, four of the DPW employees are subject to the schedule that provides this benefit.

The Union proposes the many changes to the vacation benefit reflected in the Introduction section of this Award to mirror the vacation schedule in place in the City's police unit. The Union asserts that it is the need to achieve consistency of benefits between the Employer's two organized units that motivates the Union offer on the vacation schedule. As noted above in the Introduction, there is no basis for comparing the vacation schedules of the City's law enforcement personnel and DPW employees who work a five-day Monday-Friday schedule. Other than the argument of consistency of benefits between the two units, the Union presents no other basis for changing the vacation schedules of the DPW employees.

The Union dedicates most of its reply brief in support of its final offer on vacations. It claims the law enforcement unit received an improved vacation benefit without providing a quid pro quo. The Arbitrator considered the Union's arguments and its many citations to other awards in its Original brief and paid particular attention to the Award of Arbitrator McAlpin in Dane County, 27804-A (1994)cited by the Union in its Reply brief. Arbitrator McAlpin observes that:

> When one side or another wishes to deviate from the status quo, the proponent of that change must fully justify its position and provide strong reasons and a proven need. The Arbitrator recognizes that this extra burden of proof is placed on those who wish to significantly change the bargaining relationship. In the absence of such showing, the party desiring the change must show that there is a quid pro quo or that other comparable groups were able to achieve

> this provision without the quid pro quo. Union Reply brief at p. 5-6 (Emphasis in the brief).

Since the Arbitrator does not accept the Union's premise that the vacation benefit in the law enforcement unit and the DPW units should be compared, the Union's argument for change fails.

Comparability provides little support for the Union's proposal. None of the comparables suggested by both the City and the Union provide six days of vacation after one year of service. Only Neillsville provides three weeks of vacation after five years. Rothschild and Schofield provide three weeks after six years. None of the comparables maintain a benefit level of sixteen days after six years of service. The Arbitrator can find little support for the Union's proposed changes to the vacation schedule. Accordingly, the City's offer to maintain the status quo is strongly preferred.

HOLIDAYS

The City proposes to increase the number of holidays from 12 to 13. None of the comparables proposed by the Union and the Employer offer 13 holidays. The only justification for the change is the City's use of this increase in benefit as a quid pro quo for its proposed reduction of the call-in benefit. The Union proposes to keep the number of holidays at 12. There is nothing in this record to suggest that the City would propose to increase the number of holidays, but for its proposal on call-in. This issue is weighed in the context of the City's call-in proposal.

SICK LEAVE PAYOUT

In the Introduction section of this Award, the Arbitrator notes the different impact that this proposal has in the law enforcement and DPW units. The City's attempt at consistency of benefits between the law enforcement and DPW units is without merit for the reasons set out above.

Again, the comparability criterion provides little help in determining

which offer should be preferred. The parties did not put in any actuarial data with regard to the cost of insuring this proposal. The risk of an employee being killed on the job in the course of his or her duties as a DPW employee is far less than that of a police officer being killed in the line of duty. The City's proposal in this unit is of little value.

On the other hand, the Union proposes a new benefit, the full payout of unused sick leave at the employee's rate of pay should the employee die while employed by the City. The proceeds of the sick leave would go to the employee's estate. There is no support for either benefit among the comparables. The City's proposal is of little value. The Union attempts to grab the brass ring on its first pass on this benefit. Since there is little support for this additional benefit among the comparables, the more conservative proposal of the City is preferred.

SELECTION OF THE FINAL OFFER

The City argues that vacation is the most important in this dispute. The Arbitrator finds nothing in the offers to suggest one is more important than the other.

The Arbitrator finds little support for the City's proposal to reduce the call-in benefit. The amount saved is negligible when considered in the context of a wage and benefit budget in excess of $425,000 in base year 1999. However, for individual employees, the absence of this benefit, the loss of approximately $34.00 per call-in (based on the rate for Street Department employees), is palpable. The City represented at the hearing and in its brief that should its final offer be selected for inclusion in the 2000-2001 Agreement, it will implement its call-in proposal, i.e. begin to pay for call-ins as it proposed on or after the date of the Award. It will not recalculate the pay received by employees in calendar years 2000 and 2001 for the call-ins they had in 2000 and 2001. Without that representation, the Arbitrator would have accorded substantially greater negative impact of the City's call-in proposal on its total final offer.

The Union's proposal to improve vacations is without merit or support. The City's sick leave payout proposal is preferred over the Union's attempt to go from no sick leave pay out to full sick leave payout on the death of an employee during his tenure with the City.

The Arbitrator concludes that neither final offer on the matters at issue may be justified. The parties would have been better served had they left the expired Collective Bargaining Agreement unchanged on each of the four matters in dispute, call-in pay, vacation, sick leave payout, and holidays. However, the Arbitrator finds that the statutory criteria provide less support for the inclusion of the Union's final offer in the 2000-2001 Agreement. The application of the statutory criteria identifies the City's final offer as the one preferred for inclusion in the successor Agreement. Accordingly, in the Award below the Arbitrator determines that the 2000-2001 Agreement should include the City's final offer.

Based on the above Discussion, the Arbitrator issues the following:

AWARD

Upon the application of the statutory criteria found at Sec. 111.70(4)(cm)7, 7.g., and 7.r., a.-j., Wis. Stats., and upon consideration of the evidence and arguments presented by the parties and for the reasons discussed above, the Arbitrator selects the final offer of the City of Mosinee for inclusion in the Agreement between Teamsters Local 662 and the City of Mosinee (Department of Public Works) for calendar years 2000 and 2001.

Dated at Madison, Wisconsin, this 17th day of April, 2002.

Sherwood Malamud
Arbitrator