

STATE OF WISCONSIN

Before the Interest Arbitrator

In the Matter of the Petition

of

**Labor Association of Wisconsin
East Troy Clerical Association
Local 2150**

**For Final and Binding
Arbitration Involving
Personnel in the Employ of
Village of East Troy**

Case 49

No. 59756 INT/ARB-9204

Decision No. ~~30287-A~~

[30287x]

APPEARANCES

For the Union:

Kevin Naylor, Labor Consultant

For the Village

Linda Gray, Attorney

PROCEEDINGS

**On March 21, 2002 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 Labor Association of Wisconsin, hereinafter referred to as the Union, and Village of East Troy, hereinafter referred to as the Employer.

The hearing was held on June 20, 2002 in East Troy, 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 August 19, 2002 subsequent to receiving the final briefs.

FINAL OFFERS

<u>ITEMS</u>	<u>UNION POSITION</u>	<u>EMPLOYER POSITION</u>
Wages	1/1/2001-4%; eliminate tiers of wages. 1/1/2002-4%. 1/1/2003-4%	1/1/2001-3%. 1/1/2002-3%. 1/1/2003-3%
Vision Insurance	LAW Vision Plan	Status quo

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 on expenditures that may be made or revenues that limitations t 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.

COMPARABLES

The Village has proposed adding six new communities to the list of comparables in this matter. In addition, it has proposed eliminating certain communities that were included in the Petri - 1991 decision, the Malamud - 1992 decision and affirmed in the Bellman July 29, 2002 decision.

Consistency of comparables helps to bring certainty not only to the interest arbitration process, but also to the Collective Bargaining process. The Arbitrator finds no evidence within the record of this case that would allow him to substitute his judgement for the three preceding Interest Arbitrators awards involving the Village of East Troy. The Arbitrator finds that the comparables contained in the Petri and Malamud decisions will be the comparables utilized in this interest arbitration. The Arbitrator specifically rejects the Village's attempt to add six communities to the list and to exclude other communities found appropriate in previous arbitrations.

UNION POSITION

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

The Association's wage offer is fair and equitable and should be adopted by the Arbitrator. The below average wages and benefits received by bargaining unit members as well as the internal discrepancy in pay and the corresponding negative impact it plays upon employee morale were discussed in detail during negotiations. The Employer has refused to recognize the fact that the overall wage and benefit package offered to clerical employees is well below the wages and fringe benefits received by employees performing similar services in surrounding communities. The Village's offer to increase wages by only 3% will serve to exacerbate these inequities.

In a recent interest arbitration involving the Professional Police Association of East Troy the Arbitrator found that the Village was unable to supply any proof as to evidence of insufficient resources sufficient to meet the terms of the Association's final offer. The Association would add that the Village's impressive growth rate from 1990 to 1998 makes this argument even more ephemeral.

The Association's offer also has substantial external support. Membership is currently receiving wage rates that are well below the average wages received in other communities. Only one member of the bargaining unit is receiving a wage that is currently at least average

for comparable communities. Even that person has additional tasks to perform, which are not required in other communities. The Association is attempting in its offer to move its membership toward the average wage in the comparables while forsaking improvements in other benefits. The only other issue before the Arbitrator is a modest request for vision insurance, which was promised to the membership previously. Even if the Association's offer is accepted, members will continue to receive substantially below average wages and benefits.

The interest and welfare of the public is better served by the Association's final offer. The decision in this case will significantly impact on the Village's ability to retain existing employees as well as to attract qualified employees in the future. The Association limited its final offer to a request for a fair wage scale which would bring all of its members up to a fair wage as well as a vision benefit already enjoyed by the Village's non-represented employees and its police officers.

The Association would also note internal inequities as well. The four individuals within the bargaining unit have similar responsibilities and educational backgrounds. The job descriptions supplied by the Village are nearly identical. The Arbitrator was asked to consider not only the financial impact of the final offers, but also the impact these wages and benefits have on morale and the Village's ability to attract and retain qualified and devoted employees in the future.

Based on the above, the Association asked that its offer be accepted as the most appropriate under the circumstances of this case.

EMPLOYER POSITION

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

The Village has supported its position of a 3% increase in wages in each of the three contract years by evidence of the expenditure restraint imposed by the State of Wisconsin. For 2001, the restraint was 3.9%. For 2002, the restraint is 5.2%. This places an undue burden on the Village's budget. The Village is under a mandate to comply with this restraint or lose state revenue sharing payments which would significantly reduce the Village's ability to provide the services necessary to its residents.

The Village also submitted evidence for clerical wage comparisons for its comparable set. While the Village rates are lower than the comparables with the exception of utility clerk, they are not substantially lower than each of the same categories. Wage increases range from

3-3.5%, which is in keeping with its own proposal of a 3% increase.

The Union's proposal of a 4% increase has no justification within the comparables. Indeed, the Union's comparables are not appropriate. The Union has also proposed to eliminate the two-tier system in the existing contract. This was a one-time buyout for longevity, which was then incorporated into the wage rate for the then existing covered employees. This was a bargained-for agreement between the Parties. The Union has the burden of establishing the necessity for making a persuasive case for change in the status quo. The Union has not substantiated the need for change nor a change in the status quo. Even the two full-time employees receiving the lower rate rank favorably with both the Village's and Union's comparables.

With respect to the vision insurance, this is again a change in the status quo. None of the comparables provide separate vision insurance to their employees. The Village does pay for single plan vision coverage for its police officers and non-represented employees. There is no evidence to suggest the need for this provision to cover clerical employees. Accordingly, there is no basis for a change in the status quo.

The Union has failed to establish the necessity for a change in the status quo to eliminate the two-tier system of wage rates and to provide vision insurance to the covered employees. The Union has not established a quid quo pro for these requested changes. Therefore, the Village requested that its final offer be adopted by the Arbitrator.

DISCUSSION AND OPINION

The role of an Arbitrator in interest arbitration is substantially different from that in a grievance arbitration. Interest arbitration is a 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 a potential strike involving public employees. In an interest arbitration, the Arbitrator must determine not what the Parties would have agreed to, but what they should have agreed to, and, therefore, it falls to the Arbitrator to determine what is fair and equitable in this circumstance. The statute provides that the Arbitrator must choose the last best offer of one side over the other. The Arbitrator must find for each final offer which side has the most equitable position. We use the term "most equitable" because in some, if not all, of last best offer interest arbitrations, equity does not lie exclusively with one side or the other. The Arbitrator is precluded from fashioning a remedy of his choosing. He must by statute choose that which he finds most equitable under all of the circumstances of the case. The Arbitrator must base his decision on the combination of 11 factors contained within the Wisconsin revised statute (and reproduced above). It is these factors that will drive the Arbitrator's decision in this matter.

Prior to analyzing each open issue, the Arbitrator would like to briefly mention the concept of status quo in interest arbitration. When one side or another wishes to deviate from

the status quo of the collective bargaining agreement, the proponent of that change must fully justify its position, provide strong reasons, and a proven need. It is an extra burden of proof placed on those who wish to significantly change the collective 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 groups comparable to the group in question were able to achieve this provision without the quid pro quo. In addition to the above, the Party requesting change must prove that there is a need for the change and that the proposed language meets the identified need without posing an undue hardship on the other Party or has provided a quid pro quo, as noted above. In addition to the statutory criteria, it is this concept of status quo that will also guide this Arbitrator when analyzing the respective positions.

Finally, before the analysis the Arbitrator would like to discuss the cost of living criterion. This is difficult to apply in this Collective Bargaining context. The weight placed on cost of living varies with the state of the economy and the rate of inflation. Generally, in times of high inflation public sector employees lag the private sector in their economic achievement. Likewise, in periods of time such as we are currently experiencing public sector employees generally do somewhat better not only with respect to the cost of living rate, but also vis-a-vis the private sector. In addition, the movement in the consumer price index is generally not a true measure of an individual family's cost of living due to the rather rigid nature of the market basket upon which cost of living changes are measured. Therefore, this Arbitrator has joined other arbitrators in finding that cost of living considerations are best measured by the external comparables and wage increases and wage rates among those external comparables.

In any event, both sides have agreed that the wage increases for this bargaining unit would exceed the cost of living percentage increases no matter what source.

Prior to an analysis of the various proposals, the Arbitrator would note for the record here that, while the Village made arguments with respect to the expenditure restraints, there was no showing in the record that the Village has the inability to pay this very small bargaining unit the differential between the two offers. Therefore, the factor given greatest weight does not apply to this decision. Likewise, under 7g, the factor given greater weight, there is no showing that the economic conditions are such that it would place an undue hardship on the Village and its citizens to provide for either offer. Of the other factors considered, the Arbitrator finds that it is really only the comparables that will determine the most appropriate offer.

There are three elements of dispute in this case: wage increases, elimination of the two-tier wage system and the addition of vision insurance. Of the three, clearly the wage proposals are the most important and will have the most impact on the Parties. With respect to the wage increases, particularly in light of the comparables found to be appropriate above, this is a classic case of catchup. The employees in this bargaining unit are not paid appropriately when compared to the external comparables. The Employer has argued that the percentage increase it offered is within the range of what other public employers have offered in the area. This Arbitrator has consistently found that percentages are not an appropriate method for analysis. Employees do not take percentage increases to the store to buy groceries. It is the actual wages

that are most appropriate for analysis. In this case, it is clear to this Arbitrator that these employees are currently, and have been, well behind the external comparables and, indeed, some of the internal comparables in this case. Therefore, the Arbitrator will find that the Association's position is most strongly favored by the evidence in this case.

With respect to the elimination of the two-tier wage system, the Employer has argued that there was a quid pro quo in a previous arbitration. The evidence for this is a little shaky, however, based on this and the criteria for elimination of the status quo, the Arbitrator finds that the record somewhat favors the Village's position.

With respect to vision insurance, the internal comparables strongly favor the Union's position. The external comparables favor the Employer's position. The determining factor for this Arbitrator was that the unrefuted record in this case shows that the bargaining unit was promised vision insurance if the police were able to obtain such in their contract. The police were able to obtain such and yet the Village determined not to offer this benefit to this small group. The Arbitrator finds this unconscionable and, therefore, will find that it is the Association's position which is most strongly favored.

All in all, in the record in this case it is the wage increases that are most important of the unresolved issues and would overwhelm the other issues in importance. The Arbitrator has found that it is the Association's position which is most appropriate with respect to wages and, therefore, an award will issue accordingly.

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 Association 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 13th day of September, 2002.

Raymond E. McAlpin, Arbitrator