

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

<p>In The Matter Of The Petition Of</p> <p><b>LABOR ASSOCIATION OF WISCONSIN, INC.</b></p> <p>To Initiate Interest Arbitration Between Said Petitioner and</p> <p><b>VILLAGE OF EAST TROY</b> <b>(DEPARTMENT OF PUBLIC WORKS)</b></p>	<p>Case 50, No. 59757 INT/ARB-9205 Decision No. 30289-A</p>
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**APPEARANCES:**

Mr. Kevin Naylor, Labor Consultant, 2835 N. Mayfair Road, Suite 24, Wauwatosa, Wisconsin 53222, on behalf of the Labor Association of Wisconsin, Inc.

Ms. Linda Gray, Gray, Hudec & Oleniczak, LLP., P.O. Box 287, East Troy, Wisconsin 53120, on behalf of the Village of East Troy (Department of Public Works).

The Labor Association of Wisconsin, Inc., hereinafter referred to as the Association, 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 Village of East Troy (Department of Public Works), hereinafter referred to as the Village. The undersigned was appointed as arbitrator to hear and decide the dispute, as specified by order of the Wisconsin Employment Relations Commission, dated March 20, 2002. The parties waived hearing in this matter. Briefs were exchanged, and the record was closed by August 31, 2002<sup>1</sup>.

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<sup>1</sup>On that date the undersigned advised the parties that he would consider Village of East Troy (Police Department) Dec. No. 31065-A (Bellman, 2002), that was submitted by the Association after the briefs were exchanged.

## **PARTIES' FINAL OFFERS**

### **A. FINAL OFFER OF THE ASSOCIATION**

1. **Article 22 – Vacations, page 16**

Add an additional step consisting of five (5) weeks after 19 years.

2. **Article 24 – Wages, Hours and Work Week, page 19**

Section 5 – Wages - 2001 See table below  
 2002 4.0% across the board  
 2003 4.0% across the board

Delete Section 5 Wages. Delete Section 5 in its entirety and replace with the following:

#### **Effective 1-1-01**

<u>Classification</u>	<u>Hire</u>	<u>After 1 year</u>	<u>After 2 years</u>	<u>After 3 years</u>
Seasonal	6.29			
Class I Laborer	11.23	11.70	12.17	12.65
Class II Neil Marini	13.95	14.53	15.11	15.68
Class III Semi-skilled	14.31	14.87	15.43	16.00
Class IV Equipment Operator	14.75	15.35	15.95	16.57
Class V Water Works Lab Tech, Asst. Mech.	15.00	15.62	16.24	16.86

Employees who are currently earning a wage rate that is higher than the rate stated in the above schedule shall not suffer any reduction in wages if the above schedule is implemented via an arbitration award.

**3. New Article – Vision Insurance**

The Employer agrees to pay up to eight dollars (\$8.00) per month towards the cost of the single vision plan offered through the Labor Association of Wisconsin, Inc. for all employees covered by this agreement.

**B. FINAL OFFER OF THE VILLAGE**

**January 1, 2001 through December 31, 2003**

**ARTICLE 24 – WAGES, HOURS AND WORK WEEK**

Page 19, Section 5:

Wages will be adjusted annually on the first day of January for each of the contract years. The increase for each contract year shall be 3%. All other provisions of this Article remain as in current contract.

**ARTICLE 27 – HEALTH AND WELFARE:**

No change to the current contract.

**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 ASSOCIATION**

The Association contends that it has proceeded to binding arbitration to obtain a wage rate and salary schedule that adequately and fairly compensates all of its members in a consistent across-the-board manner. In addition, the Association is asking to receive the Vacation schedule and Vision benefit enjoyed by the Police and non-represented employees.

With respect to external comparables, the Association finds no sound reason to depart from the lists established by Arbitrator Petrie in 1991 for the DPW and by Arbitrator Malamud in 1992 for Clerical employees. The Village, however, is attempting to significantly alter the previously established comparables. The Village proposes excluding several of those comparables and including new ones.

The Village has not provided enough information for including Cottage Grove, Kewaskum, Thiensville, Chilton, Columbus and Edgerton. The Village only provides wage information on those proposed comparables without including information on their

benefits, hours and working conditions. Therefore, the Association asserts the arbitrator cannot make valid comparisons.

The Village also has not provided sufficient information for why Delavan, Jefferson, Lake Geneva, Milton, Fontana, and the Town of Beloit should be excluded. The Association maintains that the Village has not presented any evidence on any significant changes in population, property values, taxpayer income, or tax levies.

The Association maintains that the benefits package for three employees in this bargaining unit is well below the benefits of other Village employees as well as surrounding DPW employees. This is especially true for DPW employees hired after January 1, 1995. The 3% wage increase will only exacerbate the inequities, the Association contends.

According to the Association, its wage proposal would replace the two-tier wage schedule with a wage grid that allows bargaining unit members in the same classification to obtain the same wage rates as they progress through the pay steps. However, under the 1998-2000 labor agreement, employees hired after January 1, 1995 are not eligible for the three-year rate. In Classification V, one of the three employees was hired after January 1, 1995 and is earning 4% less than the other two employees.

The Association emphasizes that under its proposed wage schedule new employees would start at a rate of pay that is lower than the rates listed in the 1998-2000 collective bargaining agreement. The proposed three-step schedule is similar to the wage schedules in all the external comparables. While the Village's wage offer may benefit new hires, it does nothing to reward employees who remain with the Village.

While the Town of Beloit recently was awarded 3% increases in both 2001 and 2002, the Association points out that certain positions with the Town of Beloit are paid \$3.00 more per hour than comparable positions in the Village.

Association Exhibits 504 through 509 demonstrate that DPW employees here earn substantially less than those in other communities, the Association submits. The Association calculates that on average they earn \$3.97 less, or 34% less, than surrounding communities.

Though the Association's proposal attempts to move its members to an average wage, even if the Association prevails, it will continue to receive below average wages. For example, for 2001 the average Town of Beloit Classification V Water Works employee receives \$17.47 after three years of service, while under the Association proposal all employees in Class V would receive \$16.86.

While the Association does not agree with the Village's proposed list of comparables, nonetheless, the Association argues that those also support the Association's catch-up argument. For example, the average top wage rate for Laborers using the Village comparables is \$12.94. That rate is \$1.26 higher than the rate for Laborers in the Village.

The Association further argues that if the two-tier wage system continues, the Village will have difficulty retaining employees. Arbitrators recognize that the community benefits when it provides fair wages and benefits to its employees. The Association points out that it increased the pay of its elected officials by 60% in 2001. While the Village argues the increase was needed to attract candidates for elected office, it does not use the same logic for its DPW employees. The two-tier wage system has a

negative effect on employee morale, for employees hired after January 1, 1995 earn substantially less than their counterparts hired before that date, though they perform the same duties.

In fact, Arbitrator Malamud addressed the two-tier system in his 1992 award involving the Village and its Clerical employees. He noted that the two-tier system severely hampers its ability to compete for new employees and causes internal morale problems. The Association based its final offer of a fair wage scale and Vacation and Vision benefits in part on Arbitrator Malamud's reasoning. The Association asks the arbitrator to consider, not only the financial impact of the final offers, but also their impact on employee morale and the ability of the Village to hire and attract employees.

In conclusion, the Association requests that, considering the foregoing argument, the arbitrator select its final offer. The Association cites arbitral authority in support of its argument.

### **POSITION OF THE VILLAGE**

In support of the Village's position of a 3% increase in wages for each of the three years, the Village submitted evidence of the Expenditure Restraint imposed by the State of Wisconsin. The Village notes the 2001 Restraint was "3.9% which requires the Village to limit the net general fund budget increase for 2000 as compared to 1999 to less than 3.9% to qualify for a payment.... The 2000 comparison of DPW Union wages and benefits to the total general fund budget reflects 12.44% and 5.06% of the total budget far over the 2000 expenditure restraint of 3.9%." The Village maintains that the benefits provided for covered employees in 2001, excluding wages, were 5.79% of the general



fund budget, exceeding the 2001 expenditure restraint of 5.2%. The Village submits that it must comply with the expenditure restraint or lose state revenue sharing payments.

Turning to external comparables, the Village compares four categories of DPW employees: Laborer, Semi-skilled Laborer, Equipment Operator, and Water Works Operator. The Village contends that the average 2000 starting salary for Laborer is \$14.30; for Semi-skilled Laborer, \$14.36; for Equipment Operator, \$14.89; and for Water Works Operator, \$15.20. The Village points out that its current starting rate for each category is \$11.68; \$14.63, \$15.34 and \$15.60. The Village notes that, except for Laborer, the Village wage rates for the year 2000 are higher than for each of the comparable categories.

With respect to suitable comparables, geographic proximity and size of the community should be considered, the Village argues. Of those comparables providing wage increase information, the range was 3% to 3.5%. Because the Village wage rates are higher than the average of the comparables, it submits that its 3% proposed increase would keep the Village in a similar position.

The Association, however, proposes a 4% increase with no justification and proposes comparables such as Beloit, Jefferson, Lake Mills, Milton and Evansville. Even with the Association's comparables, the percentage increase is between 3% and 4%, with the majority receiving 3.5%. The Village further points out that the 2000 cost of living increase was 3%.

With respect to the Association's proposed elimination of the two-tier system, the Village submits that during the negotiations over the 1995-1997 labor agreement, the Village agreed to a one time buyout of longevity and the buyout was included in the wage

rate for the then-covered employees. The labor agreement provided for a wage rate for those employees hired after January 1, 1995, which did not include the longevity buyout.

The Association has the burden to demonstrate the need to change the status quo. The Association's proposal would eliminate the two-tier system and increase two employees' wages by 8%. When there is a proposed status quo change, the arbitrator must consider: if, and the degree to which, there is a need for the change; if, and the degree to which, the proposal addresses the need; if, and the degree to which, there is support in the comparable; and the nature of the quid pro quo that is offered. The Association has not substantiated the need for a change in the status quo. The majority of the employees receive the higher wage rate. Even the two full time employees receiving the lower rate under the Village proposal rank favorably under both the Village and Association comparables. Moreover, the Association does not offer a quid pro quo.

With respect to the Association's Vision Insurance proposal, the arbitrator again must consider the above-cited principles with a change in the status quo. None of the comparables provide separate Vision Insurance. While the Village does provide pay for the single plan for its police officers and non-represented employees, the Association has not demonstrated the need for DPW employees to also have Vision Insurance. The Village also argues that, due to safety reasons, police officers would need the Vision Insurance.

Turning to the Association's proposal to increase Vacation, the Village points out that the DPW department is relatively small with only seven employees. The employees have by necessity been cross-trained for coverage when employees are on leave. The Village notes that in addition to twelve holidays, employees can accumulate one sick day

per month up to 120 days and can bank up to twenty-four hours of compensatory time per year.

The Village does not propose increasing the Vacation time because, with the daily coverage required and the substantial amount of time off they already receive, there is no need to change the status quo on Vacation. Moreover, the arbitrator needs to consider the other benefits received by the DPW employees. In addition, of the ten Association comparable communities, all except one receive ten or eleven holidays, not the twelve holidays enjoyed by the Village employees.

In conclusion, the Village argues that the Association has failed to establish the necessity for a change in the status quo to: eliminate the two-tier wage system, increase the Vacation time, and add Vision Insurance. The Association has proposed no quid pro quo for those changes. The Village offer of 3% wage increase for each of three years is reasonable and in keeping with awards for comparable communities. The Village cites arbitral authority in support of its position.

## **DISCUSSION**

### **A. EXTERNAL COMPARABLES**

In Village of East Troy (Public Works), Dec. No. 26906-A (Petrie, 1992), Arbitrator Petrie decided that the following external comparables were appropriate for the Public Works bargaining unit:

Delavan  
Elkhorn  
Evansville  
Jefferson  
Lake Geneva  
Milton

## Mukwonogo

In Village of East Troy (Clerical), Dec. No. 27176-A (Malamud, 1992), Arbitrator Malamud decided that for East Troy's Clerical bargaining unit, the external comparable list would include those for the Public Works, as well as:

Town of Beloit  
Village of Fontana

Recently, in Village of East Troy (Police Department) Dec. No. 31065-A (Bellman, 2002), Arbitrator Bellman found the appropriate external comparables for the Police unit should consist of those previously determined by Arbitrator Malamud.

The Association argues that the appropriate external comparables should include those comparables previously found appropriate by Arbitrators Petrie, Malamud, and Bellman. The Village, on the other hand, proposes the following external comparables:

Chilton  
Columbus  
Cottage Grove  
Edgerton  
Elkhorn  
Evansville  
Kewaskum  
Lake Mills  
Mukwonogo  
Thiensville

The party proposing the change in the comparables has the burden of demonstrating why the external comparables should be amended from those previously established. For example, there may be a substantial change in economic circumstances in the community or in the population such that other communities now better compare to this community and bargaining unit. However, no reasons were proffered, nor are there any readily apparent changed circumstances, such that it would be appropriate to amend

the list of external comparables from those previously determined by Arbitrators Malamud and Bellman. The external comparables therefore include:

Delavan  
Elkhorn  
Evansville  
Jefferson  
Lake Geneva  
Milton  
Mukwonago  
Town of Beloit  
Village of Fontana

## **B. WAGES**

### **1. WAGE SCHEDULE**

Beginning with the first year of the new labor agreement, the Association proposes the inclusion of a four-step wage schedule for each of the permanent job classifications, starting at a base wage rate with an increase for each of the next three years of service. The Association's proposal would also do away with a "grandfather" provision

The Village's final offer would continue with the status quo, which includes a "grandfather" provision for Class II (Neil Marini), Class IV (Equipment Operator), and Class V (Water Works. Lab. Tech., Asst. Mech) job classifications. The "grandfather" provision states:

The top three (3) year rates reflect an adjustment of \$.48 per hour, which is the Quid Pro Quo for eliminating longevity; effective 1/1/95. Three (3) year rates available to employees hired before 1/1/95

Therefore, employees in those three classifications hired after January 1, 1995 receive a lower rate than the employees with at least three years of experience hired before that date.

Turning to the external comparables, none appears to have a “grandfather” provision. One comparable has nine steps in fourteen years (Town of Beloit); one has five steps over ten years (Elkhorn); one has four steps in 270 days (Evansville); one has four steps in two years (Lake Mills); two have four steps in one and one-half years (Fontana and Jefferson); three have no wage steps (Delavan, Lake Geneva, and Mukwonago); and one has steps for one job classification but not others (Milton); The majority of the external comparables thus have some type of wage-step schedule.

With respect to the internal comparables, the Police unit and Clerical unit both have wage schedules in their labor agreements. In addition, Arbitrator Bellman in Village of East Troy (Police Department), selected the Association’s final offer, which included the elimination of a grandfather clause similar to the one at issue here.

It is recognized that arbitrators favor previously negotiated provisions. However, as Arbitrator Bellman noted in his award, while the Village asserts that the grandfather clause was agreed to as a one-time buyout for longevity, there is little in the evidentiary record to further support the Village’s contention.

In addition, the Association contends that the grandfather provision has caused low morale for those employees hired after January 1, 1995, and that the Village will run into problems recruiting and retaining employees under the two-tier system. The undersigned agrees that such a two-tiered system is ripe for those sorts of problems.

Given that most of the external comparables have a wage schedule (without a “grandfather” provision), the Police and Clerical internal comparables have wage schedules, and the Police unit recently had a similar grandfather provision eliminated

under Arbitrator Bellman's award, the undersigned finds that the Association's wage schedule proposal is more favorable.

## **2. ACROSS THE BOARD WAGE INCREASE**

The Association proposes 4% across-the-board increases each year, while the Village proposes 3%. Turning to the external comparables for 2001: three received increases of 3% (Evansville, Fontana, and Milton); two received 3.5% (Mukwonogo and Jefferson); one received 3.6% (Lake Mills); one received 4% (Delavan) and two had splits (Elkhorn with .5%/3.5% and Lake Geneva with 3%/1%).<sup>2</sup>

For 2002 two external comparables received increases of 3% (Mukwonogo and Elkhorn); one received an increase of 3.5% (Delavan); one received 4% (Lake Mills) and one received a split (Jefferson with 3%/.5%). The other external comparables have not reached settlements or received awards for 2002.

For 2003 two received increases of 3% (Mukwonogo and Elkhorn); and two received 4% (Delavan and Lake Mills). The other external comparables have not reached settlements or received awards for 2002.

Thus, no external comparables have received 4% for each of the three years 2001-2003, while Lake Mills received 4% the last two years with 3.6% the first year and Delavan received 4% the first and last year with 3.5% for 2002.

When considering the ranking of each classification affected by the grandfather clause, as compared to the external comparables, in the year 2000 the Laborer classification was ranked last compared to similar positions in the external comparables;

Equipment Operator hired before January 1, 1995 were ranked fourth; Equipment Operators hired after January 1, 1995 were ranked seventh; Water Works employees hired before January 1, 1995 were ranked sixth; Water Works employees hired after January 1, 1995 were ranked seventh.

With Arbitrator Bellman's award, the Police bargaining unit employees received 4% across-the-board increases in each of the years 2001, 2002, and 2003.

The Village claims that accepting the Association's offer will adversely impact State Revenue Sharing payments. However, the record does not adequately address that contention so as to assist in a determination.

Given that some of the DPW classifications are somewhat behind similar external comparable positions, that the Police unit is receiving 4% for each of the three years, and that the 4% increases will not severely boost each classification's rank with respect to the external comparables, the undersigned finds the Association's position is more favorable.

### **C. VACATION INCREASE**

The Association proposes improving the Vacation Leave. Currently, DPW bargaining unit employees receive a maximum of four weeks of Vacation with ten years of service. The Association proposes increasing the Vacation to five weeks for those employees with at least nineteen years of service. The Village proposes keeping the status quo.

The external comparables have the following maximum Vacation Leaves: Delavan has four weeks with twelve years of service with one additional day with each

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<sup>2</sup> The Association argues that the Town of Beloit recently was awarded 3% for 2001 and 2002; however, the record does not include that with the submitted exhibits, and the undersigned cannot, therefore, consider



year of additional service to a maximum of five weeks with twenty years of service. Elkhorn has a maximum of four weeks with 15 years. Evansville has two weeks plus one day for each completed year of service after five years up to a maximum of five weeks after 25 years. Fontana has five weeks after twenty years. Jefferson has five weeks after twenty-one years. Lake Geneva has four weeks after twelve years. Lake Mills has five weeks after eighteen years. Milton has two weeks and one day after four years for each completed year of service up to a maximum of four weeks. Mukwonago has five weeks after fifteen years. The Town of Beloit has four weeks after twenty years.

The external comparables are mixed and do not particularly favor either side's proposal.

With respect to the internal comparables, the represented Clerical employees receive four weeks after ten years of service; the represented Police have five weeks after nineteen years; while the non-represented Village employees have five weeks after twenty years of service. While the Village contends in part that it is difficult to cover for DPW employees taking Vacation because there are only seven employees, the other departments in the Village are also relatively small without any apparent substantial detrimental impact on staffing with the higher Vacation Leave.

Because the represented Police employees have five weeks of Vacation after nineteen years of service and the non-represented Village employees have five weeks after twenty years, the internal comparables slightly favor the Association's proposal. On balance, the undersigned finds that the internal comparables tip the balance in favor of the Association's proposal to increase the Vacation Leave.

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the Town of Beloit for those two years.

**D. VISION INSURANCE**

The Association proposes that:

The Employer agrees to pay up to eight dollars (\$8.00) per month towards the cost of the single vision plan offered through the Labor Association of Wisconsin, Inc. for all employees covered by this agreement.

The Village proposes the status quo of no Vision Insurance.

Considering the external comparables, Elkhorn, Evansville, Jefferson, Lake Geneva, and the Town of Beloit do not have Vision Insurance, while Delavan, Fontana, Lake Mills, Milton, and Mukwonago allow Vision Insurance if it is covered in the Health Insurance Plan that the employee chooses under the State plan.

The external comparables tend to favor the Village position to not add Vision Insurance.

The internal Clerical bargaining agreement does not provide for Vision Insurance. The Police bargaining agreement provides for the single Vision plan offered by the Labor Association of Wisconsin, Inc. The non-represented Village employees have a Vision plan similar to that offered in the Police labor contract. The internal comparables are somewhat mixed. With the Police bargaining agreement and non-represented Village employees enjoying Vision plans, the internal comparables slightly favor the Association's proposal.

Because the external comparables with respect to the Vision Insurance benefit favor the Village and the internal comparables do not strongly favor the Association, the undersigned finds the Village's status quo proposal of no Vision Insurance is more reasonable.

**E. CONCLUSION**

The Wage proposal is, as so often the case, the issue that drives the result, having the largest economic impact on both parties. As noted above, the Association's position on the change in the wage schedule and the across-the-board increases is found more favorable. In addition, the Association's Vacation proposal is found more reasonable. Accordingly, the Association's final offer is accepted.

Having considered the statutory criteria, the evidence and arguments of the parties, the undersigned, based on the above and foregoing, concludes that the final offer of the Association is more reasonable and therefore should be favored over the offer of the Village, and in that regard the undersigned makes and issues the following

**AWARD**

The Association's final offer is to be incorporated into the 2001-2003 three-year collective bargaining agreement between the parties, along with those provisions agreed upon during their negotiations, as well as those provisions in their expired agreement which they agreed were to remain unchanged.

Dated in Madison, Wisconsin, on September 13, 2002, by

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Andrew M. Roberts