

BEFORE THE ARBITRATOR

ROSE MARIE BARON

In the Matter of the Petition of

City of New Holstein
(New Holstein Utilities)

and

Craft Employees of New Holstein Utilities,
Local 2150, IBEW

Case 3 No. 62543
INT/ARB-9973
Dec. No. 30746-A

APPEARANCES

Edward J. Williams, Esq., Davis & Kuelthau, S.C., appearing on behalf of New Holstein Utilities.

Andrea F. Hoeschen, Esq., Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., appearing on behalf of Craft Employees of New Holstein Utilities, Local 2150, IBEW.

I. BACKGROUND

The New Holstein Utilities is a municipal employer (hereinafter referred to as the "Utility" or the "Employer"). The Craft Employees of New Holstein Utilities, Local 2150, IBEW (the "Union") is the exclusive bargaining representative of certain Utility employees, i.e., a unit consisting of all craft employees of New Holstein Utilities excluding supervisors, confidential, managerial and executive employees. The parties exchanged their initial proposals and bargained on matters to be included in a collective bargaining agreement. The Utility filed a petition requesting the Wisconsin Employment Relations Commission to initiate binding arbitration. Following an investigation and declaration of impasse, the Commission, on December 1, 2003, issued an order of arbitration. The undersigned was selected by the parties from a panel submitted by the Commission and received the order of appointment dated January 22, 2004. Hearing in this matter was held on April 29, 2004 at the City Council Chambers in

New Holstein, Wisconsin. No transcript of the proceedings was made. At the hearing the parties had the opportunity to present documentary evidence and the sworn testimony of witness.

Briefs and reply briefs were submitted by the parties according to an agreed-upon schedule. Additional information was subsequently requested by the arbitrator regarding categorization of Municipal Electric Utilities of Wisconsin (MEUW) entities by “groups” as opposed to “geographical districts.” The record was closed on July 9, 2004.

II. ISSUES AND FINAL OFFERS

The unresolved issues in this matter are:

- Wage Rates
- Call-In Pay
- Stand-by Duty
- Duration of Agreement
- Entire Memorandum of Agreement

The final offers are attached as Exhibit A (Union) and Exhibit B (Utility).

III. STATUTORY CRITERIA

The parties have not established a procedure for resolving an impasse over terms of a collective bargaining agreement and have agreed to binding interest arbitration pursuant to Section 111.70, Wis. Stats. (May 7, 1986). In determining which final offer to accept, the arbitrator is to consider the factors enumerated in 95-96 Wis. Stats., Employment Relations, Sec. 111.70:

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 legislature 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.
1. The lawful authority of the municipal employer.
 2. Stipulations of the parties.
 3. 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 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.
 7. The average consumer prices for goods and services, commonly known as the cost of living.
 - h. The overall compensation presently received by the 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.

IV. POSITION OF THE PARTIES

The following statement of the parties' positions does not purport to be a complete representation of the arguments set forth in their extensive briefs and reply briefs which were carefully considered by the arbitrator. What follows is a summary of these materials and the arbitrator's analysis in light of the statutory factors noted above. Because the selection of the appropriate communities for purposes of comparability will have a major impact on the selection of one of the parties' final offers, that matter will be addressed first.

A. The Comparables

1. The External Comparables

a. The Utility (Ex. 19)

Black River Falls Electrical Utility
Clintonville (City)*
Columbus Water & Light Commission (non-union)*
Evansville (City)
Kiel Electric Utility*
Medford Electric Utility
Mount Horeb (Village)
Richland Center Public Utility Commission

b. The Union

Cedarburg
Clintonville*
Columbus*
Hartford
Kaukauna
Kiel*
Manitowoc
Menasha
New London
Plymouth
Sheboygan Falls
Two Rivers
Waupun

* Both parties agree as to the comparability of these communities.

c. Discussion

It has been noted by interest arbitrators that there are several indicia of comparability that are of primary importance. These include the size of the units being compared i.e., the population of a municipality or, as in this case, the number of utility customers being served, and the geographic proximity of the units proposed, i.e., a question of the labor market. The labor market is loosely defined as the area from which potential or actual employees are willing to commute for employment. Another consideration is the economic health of community in comparison with proposed communities. A further question is whether the proposed comparable is unionized and is operating under a collective bargaining agreement.

In the instant case the Employer has focused only on one factor in proposing its comparables – the utilities set forth by the Municipal Electric Utilities of Wisconsin (MEUW) in its Group 4 which serve a range of 2,358 to 3,111 customers (see Employer’s letter dated July 9, 2004 which sets forth the ten MEUW **groups** which differ from the MEUW geographic **districts**

shown in Union Ex. 6). Employer witness John Skurupey, General Manager, testified that the Utility has relied on the MEUW Group 4 data in determining wages and benefits for approximately 15 years (prior to unionization of the bargaining unit).¹

The Union has expanded its selection of comparables to include utilities within a 50 to 100 mile radius of New Holstein and argues that geography is relevant to the selection of comparables because municipalities from the same geographic area are subject to the same economic conditions and compete for the same labor pool. It is the Union's position that the Utility's reliance on population and revenue in its comparables is not more significant than a shared labor market and regional economies.

I believe that the Utility's reliance on the MEUW data showing the number of electric customers and revenues are relevant factors in selecting comparables in this interest arbitration, however, it is not the only factor deserving weight. I will first address the issue of geographic proximity and shared labor market and then evaluate the Employer's argument that the most appropriate comparables are those within the MEUW Group 4 of utilities for wage and benefits comparisons.

Of the eight comparables proposed by the Utility, only one, Kiel, falls within geographic

¹These proceedings were not recorded by a court reporter, therefore, all references to testimony of witnesses are taken from the arbitrator's notes which are, in addition to the documentary evidence, the official record of the hearing.

District 4. Columbus is in contiguous District 7 and Clintonville is in contiguous District 3.²

Inspection of Union Ex. 6, the MEUW map, shows that Medford and Black River Falls are in District 2, Mount Horeb and Evansville in District 9, and Richland Center in District 6.

The Union has also included in their proposed comparables utilities in District 4, i.e., Kaukauna, Manitowoc, Menasha, and Two Rivers. In contiguous District 3, the Union lists New London (also non-union). Utilities in contiguous District 7 are Plymouth and Sheboygan Falls. Father afield in District 10 are Cedarburg and Hartford.

²Both parties have agreed on Clintonville, Columbus, and Kiel as comparables; Columbus is non-unionized.

In addressing the Union’s contention that geographic proximity defines the labor market and should be accorded greatest weight, I have attempted to ascertain exactly how distant both parties’ choices are from New Holstein and the approximate driving time in order to make a determination as to a reasonable commuting distance/time.³

TABLE 1

Distance Between New Holstein and Comparables

EMPLOYER	GEOG. DISTRICT	MILES	DRIVE TIME
Black River Falls	2	172	3' 30"
Medford	2	181	3' 50"
Mount Horeb	9	128	2' 35"
Evansville	9	127	2' 30"
Richland Center	6	163	3' 35"
*Clintonville	3	80	2' 00"
*Columbus	7	75	1' 35"
*Kiel	4	4	07"
UNION			

³Mileage and driving times are from www.randmcnally.com/directions.

Cedarburg	10	54	1' 15"
Hartford	10	72	1' 35"
Kaukauna	4	31	52"
Manitowoc	4	30	45"
Menasha	4	35	1' 00"
New London	3	63	1' 35"
Plymouth	7	18	27"
Sheboygan Falls	7	26	38"
Two Rivers	4	36	53"
Waupun	7	48	1' 15"

*Comparables agreed upon by both parties.

It is my practice to analyze available data to determine whether the proposed comparables share a labor market. A rule of thumb is to ask how far a potential or actual employee would be willing to drive to work. For certain unskilled positions paying relatively meager hourly wages, i.e., school kitchen workers, I have held that 30 to 35 miles would constitute a reasonable distance. For a professional unit, assuming salaries in a far higher range, workers might be willing to commute longer distances. In the instant case, skilled craft employees with wages above \$20 per hour might well be willing to drive greater distances to work. Referring to the table above, I have determined that the most reasonable approach would be to first consider

comparables in those utilities which are located in geographically contiguous districts to New Holstein, that is, Districts 3 and 7 on the MEUW map. Because the following utilities proposed by the Employer are well over 100 miles from New Holstein and would require two and one-half to three and one-half hours of driving time each way, I must reject them for purposes of comparability:

- District 2: Black River Falls
 Medford

- District 9: Mount Horeb
 Evansville

- District 6: Richland Center

Only two of the Union’s proposed comparables fall outside the proximate districts, i.e., both Cedarburg and Hartford are in District 10. Although they are relatively close to New Holstein, i.e., 54 and 72 miles respectively, and would require an employee to drive more than one hour each way, other factors must be considered before making a determination that Cedarburg and Hartford are appropriate comparables. Table II shows economic factors (taken from Union Ex. 7, MEUW 2002 Member Statistics), which I believe play an important role when examining communities for comparability.

TABLE II

Economic Factors in Contiguous Districts plus Cedarburg and Hartford

Community	Electric Customers	Population	Electric Revenue
Clintonville*	2,759	4,698	4,259,505

Columbus* ■	2,400	4,564	3,727,646
Kiel*	2,279	3,518	4,090,839
Kaukauna	12,384	13,430	29,942,614
Manitowoc	17,442	34,561	32,168,636
Menasha	7,330	16,529	26,432,977
New London■	3,629	7,162	9,680,944
Plymouth	7,355	8,022	12,093,234
Sheboygan Falls	3,768	6,888	9,608,891
Two Rivers	6,166	12,579	5,481,256
Waupun	4,126	10,637	5,824,473
Cedarburg■	5,801	11,252	7,995,268
Hartford	5,300	11,524	11,073,611
MEDIAN	5,300	10,637	9,680,944
New Holstein	2,433	3,322	3,760,006
Deviation from Median	-2,867	-7,315	-5,920,938

***Bold print shows agreement of the parties**

■Non-union

Inspection of Table II shows the vast differential in economic indicia between New Holstein and several of the comparables in number of customers, population, and electric revenue. It is clear from the data that Kaukauna, Manitowoc, Menasha, and Plymouth cannot serve as comparables because of the far greater number of electric customers served and electric revenue than New Holstein. These data cannot be reconciled with the fact that they are geographically proximate to New Holstein and I therefore must eliminate them from the pool of comparables.

My task is complicated by the inconsistency between number of electric customers, population, and electric revenue. For example, there does not appear to be a direct relationship between the number of electric customers and electric revenue. Cedarburg and Hartford have over 5,000 customers, very similar population of over 11,000, however, Hartford's electric revenue is some three million dollars more than Cedarburg. In a case such as this, one must admit that a strictly statistical analysis does not lead to a practical solution. There is no question that New Holstein is among the smallest utility shown in Table II in terms of all three factors. Even using the median as the measure of central tendency as opposed to the arithmetic mean, there is a significant skewing of the data because of the several utilities at the highest end. It will be necessary, therefore, to reanalyze these data by selecting a cut-off point which reflects the reality of the circumstances. I will, therefore, base my further analysis upon the size (electric customers) of the comparable utilities, taking into account the number of miles to be driven to New Holstein.

Because Clintonville has been agreed to and is 80 miles from New Holstein, that will be the farthest distance accepted (see Table I). It has been my practice to rely on only unionized comparables because I believe it is inappropriate to compare benefits sought through collective bargaining with those which are available to employees only through the unilateral dispensation of the employer (*Northwest United Educators, CESA #11*, Decision No. 29963-A, 2/24/01).

However in the instant case both parties have agreed on the inclusion of Columbus which is non-union. Despite my reluctance to do so, I will include Columbus in my analysis, but I must decline to add the two non-union utilities proposed by the Union, i.e., New London and Cedarburg.

The following table shows communities which are within 80 miles of New Holstein with no more than 6,166 electric customers. I have decided to include Two Rivers which is located in District 4 and is 36 miles from New Holstein; although it has over six thousand electric customers, its electric revenue is even less than that of Waupun which has only 4,125 electric customers.

TABLE III

Selected Comparables by Size and Distance

Community/District	Electric Customers	Miles from New Holstein
Clintonville/3	2,759	80
Columbus/7	2,400	75

Kiel/4	2,279	4
Sheboygan Falls/7	3,768	26
Two Rivers/4	6,166	36
Waupun/7	4,126	48
Median	3,264	n/a
New Holstein	2,433	--
Deviation from Median	- 831	--

Selecting comparables in this case would have been a far easier task if one party's proposal clearly was the more reasonable. However, as noted earlier, relying on the Utility's group would ignore completely the labor market/proximity factor. Adopting the Union's group in total would include some utilities which were ten times larger than New Holstein. For these reasons, I have attempted to select a group of utilities which approach a reasonable measure of similarity. The external comparables will be afforded great weight in the analysis of the parties' final offers.

2. The Internal Comparables

This arbitrator has considered the question of the relevance and weight to be given to internal comparables in other cases. In addressing this issue, I wrote:

Another important point when considering internal comparables relates to the essence of separate bargaining units, i.e., the unique quality of each and every

unit. Different groups of employees may have different goals, i.e., wages may be of vital importance to one bargaining unit while job security (e.g., language limiting subcontracting) is vital to another. . . . Although the County’s desire for uniformity in its settlements with its other bargaining units and non-represented employees is understandable, the arbitrator does not feel that this factor is controlling.

In the instant case the comparable evidence on internal equity is not persuasive. The community of interest in a unit of institution workers is different from that of a highway department, law enforcement department, or other bargaining units. Each unit uses the collective bargaining process to achieve the specific goals of its members to the best of its abilities. Even here, after impasse at the bargaining table, the arbitrator must examine the final offers of the parties in the same light and avoid the temptation to blur the unique aspects of this bargaining unit. . . . *Sheboygan County Institutions*, Dec. 28442-A [1996]).

This is a first contract and there has been no established pattern of relying on internal comparability in the past. Nor is there any rationale which compels a similar treatment of a unit of skilled electrical workers with non-unionized water and wastewater department employees and office staff. Only the New Holstein police department and street department employees are unionized. Inspection of the Utility’s table of internal union group wage settlements (Initial Brief of the Utility, page 10-11) shows that the Police unit received greater percent increases than the Street unit in 2001 (4.00% v. 3.5%); in 2002 (3.5% v. 3.0%); and in 2003 (3.5% v. 3%). A comparison of the Police and Street unionized employees with the Employer’s offer to the linemen, leadmen, and foremen in the Electric Department for 2003, 2004 and 2005 shows:

	2003	2004	2005
Police	3.5%	3.0%	3.0%
Street	3.0%	3.0%	3.0%
Electric (all levels)	3.0%	4.0%	3.0%

It is noted that The Electric Department received greater wage increases in 2002 (5% for

Linemen and Leadmen, 6% for Foremen) than either the Police or Street units. Clearly the benefits received by the unionized units have not been identical over the years.

I do not deem internal comparability to be as compelling a factor in selecting one party's final offer over the other's. Although the Employer's wish for equity among its employees is understandable, I do not have the authority to apply equitable standards in my decision making, but must stay within the statutory guidelines. Therefore, internal comparability will be afforded lesser weight in the analysis of data submitted.

V. DISCUSSION AND FINDINGS

The parties in this interest arbitration have not relied upon nor have they argued for the application of the "Factor given greatest weight" (Section 111.70(4)(cm)7, Wis. Stats.), i.e., any state law or directive which places limitations on expenditures or revenues that may be collected by the employer) or the "Factor given greater weight" (Section 111.70(4)(cm)7g, Wis. Stats.), which requires the arbitrator to give greater weight to economic conditions of the municipal employer.

It is appropriate therefore to examine the factors listed in Section 111.70(4)(cm)7r as applied to the final offers of the parties. Each of the unresolved issues will be discussed below in terms of both the external and internal comparables: Wage Rates, Call-In Pay, Stand-by Duty, Duration of Agreement, and Entire Memorandum of Agreement.

A. Wages

1. External Comparables

The Union's position on wages is that based on the comparables it proposed there is a clear need for catch-up. Further it is asserted that New Holstein does not have longevity pay

as do several of its comparables. Because the Union’s comparables have not been adopted in total, it is necessary to subject these claims to a test utilizing the comparables selected by the arbitrator. In order to make a consistent comparison I have converted the Union’s wage offer of 3.00% plus \$.30 from a percent plus cents figure to percent only.*

TABLE IV
Percent Wage Increase

Community/District	2003	2004	2005
Clintonville	1/1: 3.50%; 7/1: 1.0% = 4.50%	3.00%	3.00%
Columbus	3.00%	2.50%	N/S
Kiel	3.50%	3.25%	3.25%
Sheboygan Falls	3.50%	3.00%	---
Two Rivers	1/1; 10% catchup; (4.00% split '03 & '04)= 2.00% Total 12%	2.00%	---
Waupun	3.00%	---	---
Median	3.50%	3.00%	3.125%
New Holstein-Utility	3.00%	4.00%	3.00%
New Holstein-Union	7/1: 3.00% + 1.25% = 4.25%	1/1: 3.00% + 1.25% = 4.25% 7/1: 1.25% Total 5.50%	1/1: 3.00% + 1.25% = 4.25%

*The \$.30 increase (characterized as catch-up) equals 1.25% of the hourly wages shown in Union Ex. 12, 13, and 14; in 2004 catch-up will double to 2.50% in addition to the 3.00% offer.

Inspection of Table IV shows that both parties’ offers deviate from the median, however, for each of the three years the Utility’s offer more closely approaches the median:

2003: Utility's offer deviates $-.50\%$ while the Union's offer deviates $+.75\%$ from the median.

2004: Utility's offer is 1.00% above the median while the Union's offer is 2.50% above.

2005: Utility's offer is $.125\%$ below the median while the Union's offer falls 1.125% above the median.

Based on these data the Utility's offer is deemed to be closer to the external comparables and is the more reasonable of the two offers.

2. Internal Comparables

As stated above the appropriate internal comparables are those New Holstein departments which have reach settlements through collective bargaining. Therefore only the Police and Street Departments settlements will be relied upon in this analysis.

Utility Ex. 16 provides the settlements for Police and Street Department; the calculation of the Union's offer is shown above in Table IV above.

For 2003, the Police Department received 3.50% ; the Street Department 3.00% for an average of 3.25% . The Utility's offer to the Electric Department of 3.00% deviates from the median by minus 0.25% , while the Union's offer of 4.25% is plus 1.00% higher.

For 2004, both Police and Street settled for 3.00% . The Utility's offer to the Electric Department of 4.00% is 1.00% higher while the Union's offer of 5.50% exceeds the median by 2.50% .

For 2005, both Police and Street settled for 3.00% . The Utility's offer to the Electric Department of 3.00% reflects the average while the Union's offer of 4.25% exceeds the median by 3.00% .

The record does not provide an explanation of the different increases for 2003 and whether the Street Department accepted an lower offer than the Police Department as a result of some trade-off for another benefit. Nonetheless, for purposes of this inquiry, it is sufficient to

conclude that the Utility's final offer on wages for all three years more closely approximates that of the unionized New Holstein departments than does the Union's. While I believe that internal comparables are less compelling than externals, these results are entitled to consideration, albeit at a lesser quantum.

The Union asserts that its offer is more reasonable because New Holstein does not take longevity into account. Union Ex. 11 provides information on longevity, however, it cannot be completely utilized because I have not accepted the Union's comparables in total. It is necessary therefore to consider those utilities which have been selected as comparables as to longevity.

Of the six external comparables listed in Table IV, Clintonville and Columbus do not provide longevity pay to Utility employees. Kiel, Sheboygan Falls, Two Rivers, and Waupun provide longevity pay in a wide range of dollar amounts and percentages. Both internal comparables, the Police and the Street Department receive cents per hour longevity pay which differ only in the years when such pay begins (at 5 years for police and 10 years for Street) and when it ends (25 years for Police and 30 years for Street).

Longevity pay is not one of the unresolved specific issues before the arbitrator. Rather it has been raised by the Union to justify its larger wage increase proposal. Examples are provided which indicate how much more senior employees of the Utility would earn because of longevity if they worked in other utilities. Nothing in this record supports the addition of a discrete category of benefit which was not a subject of bargaining before impasse was declared in these proceedings. Therefore I must decline to place any weight on the fact that longevity pay has been agreed to among other external and internal bargaining units and their employers.

B. Call-in Pay

The Union's final offer:

Wage Rates, Section 3 - Call-In Pay. Employees called in outside their regular work schedule shall receive one and on-half (1 ½) times their straight time rate of pay for all hours worked or a minimum of two (2) hours at one and one-half (1/2) times their

straight time rate of pay whichever is greater for each day.

The Utility's final offer:

Employees who are called back to work after regular working hours shall be entitled to the greater of either two (2) hours pay at the rate of time and one-half (1 ½) or the time worked. This provision does not apply to an employee who starts work early and continues into the regularly scheduled work hours, or who continues work past the regularly scheduled work hours. (Emphasis in original).

The Union argues that its proposal is the more reasonable because it maintains the status quo, i.e., employees have always been paid a minimum of two hours for a call-in, even if the call-in occurred immediately before their regular shift. Thus an employee whose shift begins at 7:00 a.m. and is called in at 6:00 a.m. would be paid for an additional two hours of work at one and one-half his regular rate of pay. The Union contends that the Utility has not met the burden of demonstrating a compelling justification for a change in the status quo based upon the following three-part test: (1) there must be a legitimate problem which requires attention; (2) the disputed proposal must reasonably address the problem; (3) the proposed change must be accompanied by an appropriate quid pro quo (citations omitted).

The Utility argues that for a past practice to exist it must be unequivocal, clearly enunciated and acted upon, and readily ascertainable over a reasonable period of time as an established practice accept by both parties (citation omitted). The Utility contends that it has had no knowledge that employees were submitting call-in time for work immediately preceding or after their shifts. Paula Pethan, the Employer's office manager for the past 14 years, testified that she had not heard that circled hours on time sheets represented call-in until a WERC mediation session. Company Ex. 32, time sheets showing circled numbers, e.g., 2, were not referred to in any way as call-in time and were treated by the employer as overtime.

General Manager John Skurupey testified that a "Communication" form (Utility Ex. 35–filled out; Union Ex. 18–blank), does not indicate whether the time was to be paid for overtime or

call-in. Union President Tom Pafford, the Line Foreman, testified that one of his duties was to fill out time sheets, et al. When asked about this form, Mr. Pafford stated that the form went to the General Manager. He stated that this process started one month ago.

The Utility notes that the testimony of Union witness and retiree, Melvin Meier, a foreman who had prepared time sheets in the past, referred to the circle on the time sheets as a “trouble call.” Ms. Pethan testified that she had ever head that term. Thus there is no agreement between the parties that the circled number on the time sheet represented call-in pay.

It would be difficult to conclude that a past practice existed if indeed the employer believed it was paying overtime pay to employees and did not recognize a circled number as call-in pay. There does not appear to exist a practice which is unequivocal, clearly enunciated and acted upon, and ascertainable over a reasonable period of time which has been accepted by both parties.⁴

In addition, the specific facts of this case do not support the concept of the status quo or past practice. I have long believed, and held, that the status quo/compelling reason standard is traditionally used only when a collective bargaining agreement has been in existence and one of the parties is attempting to renegotiate certain provisions. In *Benton School District*, Decision No. 24812-A (1988), I held:

The arbitrator agrees that interest arbitration should not be used as a vehicle to gain or limit a broad range of benefits which have eluded the grasp of either party during bargaining. However, the standard referred to above is more properly applied to a desired change in contract language which, after application during

⁴An example of an unequivocal custom or past practice which is of benefit to employees is a 10-minute wash-up period prior to the end of a shift for which the employees are paid and which management was aware of and had not objected to for a period of years.

the term of the contract, has proven unsatisfactory to one of the parties. This is not the situation in the instant case which is one of a first contract between the parties. There is no status quo because there are no collectively bargaining conditions of employment; any benefit previously received by the employees in the newly-created and represented bargaining unit is the result of unilateral employer largesse or goodwill. (emphasis in original).

As in *Benton*, these proceedings involve a first contract. As such there is no guarantee that employee rights and responsibilities prior to organization will continue as they have in the past. Merit increases may give way to a specific pay scale; the employer's former disciplinary procedure may be limited by the introduction of progressive discipline and a grievance procedure; trade-offs may be made in immediate wage increases in favor of higher employer contribution to a pension plan. In the instant case the Utility's proposal to introduce language into the collective bargaining agreement which will limit payment for call-in is not barred by an unequivocal past practice. It will therefore be necessary to look to the comparables to determine which offer is the more reasonable.

There is no question that the Utility is attempting to limit its costs when call-in situations arise immediately prior to or after work shifts. I have reviewed the documentary evidence introduced by the parties to determine how the internal and external comparables handle this issue. Union Ex. 16 provides benefit comparisons of the Utility with the unionized Police and Street Department. This exhibit merely lists "2 hrs. 1 1/2X" for all three departments. Utility Ex. 18 provides the language of the call-in provision in both Police and Street contracts which provides the greater of either two (2) hours of pay at time and ½ or the time worked and in addition specifically provide the following provision:

This provision does not apply to an employee who starts work early and continues into the regularly scheduled work hours, or who continues to work past the regularly scheduled work hours.

The data is quite limited when reviewing the external comparables. The only comparisons provided are in Utility Ex. 25 and only three of the communities fall into the arbitrator's selection of comparables. In Clintonville, an employee who is called from home due

to an emergency prior to the commencement of his shift receives call-in pay. If he works past his regular hours, he would not receive call-in pay. In Columbus, the 2-hour guarantee does not apply to work immediately prior to or subsequent to the employee's work schedule. In Kiel, employees who are called in prior to their work shift receive call-in pay. They do not receive call-in pay if they work beyond their schedule, unless they were to go home and receive a call to come back to work.

Only Columbus speaks specifically to work both prior to and subsequent to the employee's work schedule as not being subject to the two-hour guarantee. Clintonville and Kiel appear to focus on work past regular hours as not receiving call-in pay. It is my belief that the difference between the internal and external comparables and the Union's final offer is that being eligible for call-in pay requires employees to have left the workplace and subsequently are called back to work outside of the regularly scheduled hours. While not the best comparison, these external comparables set forth the same principle as sought by the Utility in this case.

In this instance the clearest evidence in support of the Utility's position is seen in the Police and Street Department comparables. I therefore find that the Utility's final offer on call-in pay is preferable to that proposed by the Union.

C. Stand-by Duty

The Utility proposes to raise the benefit currently paid to employees for weekend standby from \$120 to \$150. It is argued that by retaining a flat dollar amount the Employer's costs will be contained as opposed to the Union's offer which calls for seven hours of pay based upon the employee's wage rate. A review of the internal comparables show that neither of the two unionized units, Police and Street Departments, include stand-by compensation language. Two units, the Water and Wastewater Departments contain stand-by language, however, I have ruled earlier that non-unionized employees will not be accepted as appropriate comparables. As for external comparables, I can find no specific data from the Union. The three comparables the

parties have agreed upon, Clintonville, Columbus, and Kiel have stand-by language (Utility Ex. 26). Clintonville provides, inter alia, six (6) hours of time at the regular straight time rate of pay per day. Columbus provides employees required to be on stand-by duty on weekends four and one-half hours of pay at time and one-half of their regular hourly rate of pay (Saturday and Sunday) for each such day of stand-by. Kiel pays, inter alia, a premium of eight hours pay at straight time for stand-by duty on Friday, Saturday, and Sunday.

In this issue there is no support from the internal comparables for the Utility's final offer. In addition, the external comparables support the Union's concept of tying stand-by pay to the wage rates of employees rather than a flat sum. The Union's offer is therefore deemed to be the more reasonable.

D. Duration of Agreement

The Utility proposes that the contract duration be on the same cycle as its fiscal year, i.e., January 1 through December 31. The Union proposes that the contract be on a July 1 to June 30 cycle.

The Utility argues that all operations of the employer have been for many years, and continue to be, on a calendar year basis, budgeting, rate forecasting, annual audit Health and dental insurance costs are transmitted to the employer in September or October, thus a settlement with the Union in June would not be based on accurate figures. It is further asserted that the Union's offer does not propose a specific date for giving notice of any bargaining changes for the subsequent year whereas the Utility proposes August 16, 2005 for providing proposals for change by the Union, a September 16, 2005 for the Utility to respond, and negotiations to commence no later than October 7, 2005.

The Union proposes to begin the first contract on July 1, 2003 to provide catch-up to the bargaining unit. The Union has foregone any catch-up until more than a year after its certification and proposes only that catch-up be retroactive to July 1, 2003.

Of the three external comparables, Clintonville and Columbus are on a January-December contract duration; Kiel is on a July to June cycle. (Utility Ex. 19).

The Union's wish to provide an additional benefit to the bargaining unit by beginning wage increases is understandable, however, I have already discussed, and rejected, the Union's final offer on wages. The Union's argument on contract duration cannot be viewed apart from its catch-up position on wages. Therefore, based upon the preponderance of the evidence derived from the comparables, the Utility's offer to continue the fiscal cycle of January through December is preferable.

E. Entire Memorandum of Agreement.

The Utility has proposed contract language which acknowledges the finality of the collective bargaining agreement and waives the right of either party to bargain collectively with respect to any subject matter covered by the agreement during its term. Both the unionized Police Department and Street Department have similar language.

The Union has not proposed contract language on this provision.

Based upon the internal comparables, I conclude that the Utility's offer on this provision is preferable.

VI. CONCLUSION

The Utility's final offer has been deemed to be the more reasonable as to Wage Rates, Call-In Pay, Duration of Agreement, and Entire Memorandum of Agreement.

The Union has prevailed in only one item of its final offer, i.e., Stand-by Duty Pay.

VII. AWARD

Based upon the discussion above, the final offer of the Utility shall be adopted and incorporated in the parties' Collective Bargaining Agreement for the period January 1, 2003 through December 31, 2005.

Dated this 31st day of August, 2004 at Milwaukee, Wisconsin.

Rose Marie Baron, Arbitrator

UNION'S

FINAL OFFER

10-17-03

IBEW LOCAL 2150

NEW HOLSTEIN UTILITIES

CRAFT EMPLOYEES

The Union reserves its right to add to, delete or modify its proposals during the Mediation/ Investigation. No agreement is final until approved by membership ratification and the International. No portion of these proposals shall be deemed a waiver of any existing rights; all proposals regarding existing rights are merely attempts to codify existing conditions.

EX. A

TENTATIVE AGREEMENTS

Incorporate all executed tentative agreements of the parties.

ARTICLE - HOLIDAYS

Union would accept Utilities proposal on Holidays pursuant to 10-9-03 proposal.

Note: Copy will be faxed to Mr. Williams for signing off. Executed copy to Union and Mr. Houltham.

ARTICLE --- -- WAGE RATES

Section 1 - Pay Rates. The rates of pay covered by this Agreement shall be in accordance with Schedule A which is attached hereto.

Section 2- Standby Duty. Employees on standby duty shall receive seven (7) hours pay at their regular straight time pay for being on standby duty from Friday 3:30 p.m. to Monday 7:00 a.m.. Employees on standby duty on a holiday shall receive pro rata compensation.

Section 3- Call-In Pay. Employees called in outside of their regular work schedule shall receive one and one-half (1 1/2) times their straight time rate of pay for all hours worked or a minimum of two (2) hours at one and one-half (1 1/2) times their straight time rate of pay whichever is greater for each day.

NOTE: A LETTER SIGNED BY RETIRED LINE FOREMAN MELVIN MEIER FAXED TO MR. WILLIAMS AND MR. HOULIHAN SUPPORTING OUR STATUS QUO PROPOSAL ON CALL-IN WHERE EMPLOYEES CALLED IN ANYTIME OUTSIDE OF WORK SCHEDULE IS COMPENSATED WITH 2 HOUR MINIMUM. EXAMPLE: EMPLOYEE CALLED IN 1 HOUR PRIOR TO WORK SHIFT WOULD RECEIVE 2 HOUR MINIMUM CALL IN PAY PLUS REGULAR WORK SCHEDULE PAY.

ARTICLE ---- - DURATION OF AGREEMENT

This Agreement shall be in full force and effect from July 1, 2003 to and including June 30, 2005. The Agreement shall be automatically renewed from year to year thereafter, unless the party desiring to modify, alter or otherwise amend the Agreement or any of its provisions gives to the other party written notice on or before _____, or any anniversary thereof.

IN WITNESS WHEREOF, the parties hereto have set their respective names this _____ day of _____, 200-.

For the Utility:

For the Union:

SCHEDULE A - WAGE RATES

CURRENT RATES AS OF 1/1/03

FOREMAN - \$23.96

LEAD LINEMAN - \$22.91

JOURNEY LINEMAN - \$22.47

APPRENTICE LINEMAN:

0-6 Months 75% of Journeyman Lineman Rate
6-12 Months 78% of Journeyman Lineman Rate
12-18 Months 81% of Journeyman Lineman Rate
18-24 Months 84% of Journeyman Lineman Rate
24-30 Months 87% of Journeyman Lineman Rate
30-36 Months 90% of Journeyman Lineman Rate
36-42 Months 93% of Journeyman Lineman Rate
42-48 Months 96% of Journeyman Lineman Rate

UNION PROPOSAL

7/1/03 - .30 catch up

1/1/04 - .30 catch up + 3%

7/1/04 - .30 catch up

1/1/05 - .30 catch up +3%



UNION'S

FINAL OFFER

10-17-03

IBEW LOCAL 2150

NEW HOLSTEIN UTILITIES

CRAFT EMPLOYEES

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EX. A

TENTATIVE AGREEMENTS

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Union would accept Utilities proposal on Holidays pursuant to 10-9-03 proposal.

Note: Copy will be faxed to Mr. Williams for signing off. Executed copy to Union and Mr. Houllhan.

ARTICLE --- - WAGE RATES

Section 1 - Pay Rates. The rates of pay covered by this Agreement shall be in accordance with Schedule A which is attached hereto.

Section 2- Standby Duty. Employees on standby duty shall receive seven (7) hours pay at their regular straight time pay for being on standby duty from Friday 3:30 p.m. to Monday 7:00 a.m.. Employees on standby duty on a holiday shall receive pro rata compensation.

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ARTICLE ---- - DURATION OF AGREEMENT

This Agreement shall be in full force and effect from July 1, 2003 to and including June 30, 2005. The Agreement shall be automatically renewed from year to year thereafter, unless the party desiring to modify, alter or otherwise amend the Agreement or any of its provisions gives to the other party written notice on or before _____, or any anniversary thereof.

IN WITNESS WHEREOF, the parties hereto have set their respective names this _____ day of

_____, 200-.

For the Utility:

For the Union:

ARTICLE ---- - DURATION OF AGREEMENT

This Agreement shall be in full force and effect from July 1, 2003 to and including June 30, 2005. The Agreement shall be automatically renewed from year to year thereafter, unless the party desiring to modify, alter or otherwise amend the Agreement or any of its provisions gives to the other party written notice on or before _____, or any anniversary thereof.

IN WITNESS WHEREOF, the parties hereto have set their respective names this _____ day of _____, 200-.

For the Utility:

For the Union:

SCHEDULE A - WAGE RATES

CURRENT RATES AS OF 1/1/03

FOREMAN - \$23.96

LEAD LINEMAN - \$22.91

JOURNEY LINEMAN - \$22.47

APPRENTICE LINEMAN:

0-6 Months 75% of Journeyman Lineman Rate
6-12 Months 78% of Journeyman Lineman Rate
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30-36 Months 90% of Journeyman Lineman Rate
36-42 Months 93% of Journeyman Lineman Rate
42-48 Months 96% of Journeyman Lineman Rate

UNION PROPOSAL

7/1/03 - .30 catch up

1/1/04 - .30 catch up + 3%

7/1/04 - .30 catch up

1/1/05 - .30 catch up +3%

NEW HOLSTEIN UTILITIES

FINAL OFFER

TO

**THE CRAFT EMPLOYEES
EMPLOYED BY NEW HOLSTEIN UTILITIES AS
REPRESENTED BY LOCAL 2150, I.B.E.W.**

November 14, 2003



Ex. B

Effective the later of either ratification by the parties of this agreement or the date of an interest arbitration award:

TENTATIVE AGREEMENTS

Incorporate all executed tentative agreements of the parties.

ARTICLE
CALL-IN

Employees who are called back to work after regular working hours shall be entitled to the greater of either two (2) hours pay at the rate of time and one-half (1½) or the time worked. This provision does not apply to an employee who starts work early and continues into the regularly scheduled work hours, or who continues work past the regularly scheduled work hours.

ARTICLE
STAND-BY DUTY

The Employer may require employees to be on stand-by duty during weekends and holidays. The stand-by duty shall be rotated among the employees; however, employees may volunteer for stand-by duty and may trade stand-by duty provided the employee first notifies the Employer. The stand-by periods shall be from the end of the work day preceding the holiday or weekend, and shall continue until the commencement of the work day following the holiday or the weekend. The employees shall be assigned a beeper, cell phone, or other telecommunications device to receive calls and shall respond to the customer's service concerns within the desired time frame of twenty (20) minutes. The employee on stand-by shall receive One Hundred Fifty Dollars (\$150.00) for the period commencing 3:30 p.m. Friday to 7:00 a.m. the following Monday or prorata portion thereof, and Seventy-Five Dollars (\$75.00) for each holiday when the employee is assigned stand-by duty.

ARTICLE
DURATION

1. This agreement between the parties shall be for the period January 1, 2003 through December 31, 2005.
2. Bargaining Procedure:
 - a. Step 1. On or before August 16, 2005, the Union shall present its bargaining request to the Employer.
 - b. Step 2. The Employer shall present its proposals to the Union by September 16, 2005.
 - c. Step 3. Negotiations will then commence not later than October 7, 2005.

ARTICLE
ENTIRE MEMORANDUM OF AGREEMENT

The parties acknowledge that during negotiations which resulted in this agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any bargamable subject or matter and that the understandings and agreements arrived at by the parties after exercise of that right and opportunity are set forth in this agreement. Therefore, the Utility and the Union, for the life of this agreement, each voluntarily and unqualifiedly, waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to or covered by this agreement.

NEW HOLSTEIN UTILITIES

Wage Rate Schedule Electric Department

Existing 2003 Salary Schedule

	Rate
Journeyman Lineman	\$22.47
Lead Lineman	\$22.91
Line Foreman	\$23.96

<u>APPRENTICE</u>	0-6 Months	75% of Journeyman Lineman Rate
<u>LINEMAN:</u>	6-12 Months	78% of Journeyman Lineman Rate
	12-18 Months	81% of Journeyman Lineman Rate
	18-24 Months	84% of Journeyman Lineman Rate
	24-30 Months	87% of Journeyman Lineman Rate
	30-36 Months	90% of Journeyman Lineman Rate
	36-42 Months	93% of Journeyman Lineman Rate
	42-48 Months	96% of Journeyman Lineman Rate

NOTE: In the Fall of 2001, prior to the Union petitioning for recognition, the Utility had, as it had customarily in the past, set wages, hours and working conditions for the two-year period, January 1, 2002 through and including December 31, 2003, consisting of a 6% wage increase for Line Foreman and a 5% wage increase for all other classifications effective January 1, 2002; and a 3% across the board increase for all positions effective January 1, 2003.

NEW HOLSTEIN UTILITIES

Wage Rate Schedule Electric Department

January 1, 2004	Increase
Journeyman Lineman	4.0%
Lead Lineman	\$23.37
Line Foreman	\$23.83
	\$24.92

January 1, 2005	Increase
Journeyman Lineman	3.0%
Lead Lineman	\$24.07
Line Foreman	\$24.54
	\$25.67

APPRENTICE LINEMAN:

0-6 Months	75% of Journeyman Lineman Rate
6-12 Months	78% of Journeyman Lineman Rate
12-18 Months	81% of Journeyman Lineman Rate
18-24 Months	84% of Journeyman Lineman Rate
24-30 Months	87% of Journeyman Lineman Rate
30-36 Months	90% of Journeyman Lineman Rate
36-42 Months	93% of Journeyman Lineman Rate
42-48 Months	96% of Journeyman Lineman Rate