

State of Wisconsin

In the Matter of the Petition of

General Teamsters Union, Local No. 662

and

Village of Hobart

WERC Case No. 69233

Int/Ar-11403

Dec. No. 32923-A

Appearances:

Mr. Robert W. Burns, Esq., Davis & Kuelthau, S.C., 318 South Washington St., Suite 300, Green Bay, WI 54301, on behalf of the Village

Mr. Scott D. Soldon, Esq., Previant Goldberg Uelmen Gratz Miller & Bruggeman, S.C., 1555 N. RiverCenter Dr., Suite 202, Milwaukee, WI 53212, on behalf of the Union.

On December 14, 2009, the WERC certified the above parties to be at impasse in their negotiations after the Union filed its October 9, 2009, petition herein and the WERC conducted mediation on November 18th. The WERC collected the parties' final offers by December 7th and on January 21, 2010, the Commission issued its Order appointing Sharon A. Gallagher as arbitrator herein pursuant to the parties' joint request.

Hearing in the matter was held at the Village Hall in Oneida, WI, beginning at 10:00 AM on April 16, 2010 by agreement of the parties. No stenographic transcript of the proceedings was taken. The parties had a full opportunity to submit evidence and argument in this case. Ten Union Exhibits and thirty-four Village Exhibits were received into the record. One Union witness and two Village witnesses testified under oath. The hearing was closed on April 16th and the parties agreed to postmark their initial briefs directly to each other with a copy to the Arbitrator on May 17th and that they would submit any reply briefs postmarked ten working days after their receipt of the other party's initial. Parties thereafter agreed to submit initial briefs on June 7th. The Arbitrator received the Village's letter waiving reply, the last document herein, on June 25, 2010, whereupon the record was closed.

The Parties' Final Offers:

Union Final Offer:

1. **ALL TENTATIVELY AGREED ITEMS TO DATE**
2. **Add to Schedule A:**
Longevity

Upon completion of the required consecutive years of service and continuing with each pay period there after, all regular full time and regularly scheduled part time employees shall receive longevity payments as follows:

<u>Upon completion of</u>	<u>Annual Payment</u>
Five (5) through nine (9) years	\$100.00
Ten (10) through fourteen (14) years	\$200.00
Fifteen (15) or more years	\$300.00

3. Article 14, Page 6, *Paid Vacation Leave*

An employee may carry over ~~ten (10)~~ five (5) days of accumulated vacation leave from one calendar year to the next calendar year. The carried over vacation must be used up in the first four (4) months of the following calendar year or it will be lost. Vacation leave earned, but not taken, in excess of ~~ten (10)~~ five (5) days beyond the prior calendar year will be lost. An employee's accrued vacation time shall be compensated by the Village at the employee's then current rate of pay, upon termination of the employee by voluntary or involuntary separation from employment. The payment procedure will follow the current Village payment policy at the time of termination of employment.

4. **ARTICLE 40. DURATION**

Modify as follows:

This Agreement shall become effective as of the 1st day of **January, 2007 2010** and shall remain in force and effect to and including December 31, ~~2009~~ **2011** and shall renew itself for additional one (1) year periods until and unless either party, prior to June 1st, before the expiration of this Agreement and the expiration of any of its renewal dates, notify the other party in writing that it desires to alter or amend the same at the end of the Agreement.

5. **SCHEDULE A**

Effective 1/1/2010 – 1 ¼% Across the Board Increase
Effective 7/1/2010 – 1 ¼% Across the Board Increase
Effective 1/1/2011 – 2% Across the Board Increase
Effective 7/1/2011 – 0.5% Across the Board Increase

Village Final Offer:

1. **All Tentatively Agreed to Items (see attached Tentative Agreements of October 6, 2009)**

2. Article 8, Page 3 *Bargaining Unit Work*

The only exception to this will be the non-bargaining unit supervisor(s) in the Public Works Department who shall be included in the on call rotation list, carrying the pager and the weekend rotation for inspection duties. The non-bargaining supervisor(s) shall also be allowed to continue to perform duties ~~he has~~ historically performed provided they ~~he~~ are is not permanently displacing a bargaining unit position or

person, no bargaining unit person is laid off, has their hours reduced below forty (40) hours in one (1) regular workweek or there is a reduction of the work force as a result of such work. It is understood that it is not the intent of this Article to disrupt any existing working arrangements of the Village.

3. Article 14, Page 6, *Paid Vacation Leave*

An employee may carry over ~~ten (10)~~ five (5) days of accumulated vacation leave from one calendar year to the next calendar year. The carried over vacation must be used up in the first four (4) months of the following calendar year or it will be lost. Vacation leave earned, but not taken, in excess of ~~ten (10)~~ five (5) days beyond the prior calendar year will be lost. An employee's accrued vacation time shall be compensated by the Village at the employee's then current rate of pay, upon termination of the employee by voluntary or involuntary separation from employment. The payment procedure will follow the current Village payment policy at the time of termination of employment.

4. WAGES (2 year period)

Effective 1/1/2010- 0%

Effective 1/1/2011- 1%

5. Duration

Revise all applicable dates to reflect duration of January 1, 2010 through December 31, 2011.

Tentative Agreements:

VILLAGE PROPOSALS:

1. Article 11, Page 4 *Compensatory Time*

Employees shall be able to accumulate up to 40 hours of compensatory time with the prior approval of their ~~department head and Village Administrator~~ and can use the time with prior approval of their ~~department head and Village Administrator~~. Up to 40 hours of compensatory time may be carried over into the following year. Employees shall be allowed to take comp. time in one (1) hour increments.

2. Article 31, Page 10, Part D *Job Posting*

In the event that the ~~Board~~ Village Administrator determines an employee is not qualified to fill a position before the end of the thirty (30) calendar day trial period, the Employer reserves the right to return the employee to his or her former position and former rate of pay. Continued service in a position beyond the trial period shall be considered as evidence of the satisfactory completion of the trial period.

UNION PROPOSALS:

1. ARTICLE 3. FAIR SHARE AND DUES DEDUCTION

Add: D.R.I.V.E. (Democratic Republican Independent Voter Education)

The Employer agrees to deduct from the paycheck of all employees covered by this Agreement voluntary contributions to D.R.I.V.E. D.R.I.V.E. shall notify the Employer of the amounts designated by each contributing employee that are to be deducted from the employee's paycheck on a weekly basis for all weeks worked. The phrase "weeks worked" excludes any week other than a week in which the employee earned a wage. The Employer shall transmit to D.R.I.V.E. National Headquarters on a monthly basis, in one check, the total amount deducted along with the name of each employee on whose behalf a deduction is made, the employee's Social Security number and the amount deducted from the employee's paycheck.

2. ARTICLE 22. HOURS OF WORK

Modify as follows:

The normal work day shall be Monday through Friday. The hours of work for each department will be recommended by the department head with the approval of the Village Administrator. Said hours shall not be construed as a guarantee of hours of work per day or per week.

Time-and-a-half the Employees regular straight time hourly rate shall be paid for all work in excess of the normal schedule work day of at least eight (8) hours per day or (40) hours per week.

~~The Office~~ Employee's normal work schedule will be set one month in advance, within the hours of ~~6~~ 7 am through ~~6~~ 5 pm.

DPW normal work hour schedule shall be between the hours of 6:00 a.m. to 4:30 p.m.

3. ARTICLE 26. PAGER/PHONE PAY

Modify as follows:

The Employer may require Employees to carry a pager or phone on a rotating basis for a week at a time for emergency call purposes. Any employee required to carry a pager or phone shall be compensated ~~\$100.00~~ **\$110.00** per week for doing so.

4. Incorporate into the body of the contract under Article 13 with the following modifications to the language of the Letter of Understanding only:

LETTER OF UNDERSTANDING

~~This letter is entered into and between the Village of Hobart and Teamsters Local 662 representing the Employees of the Village of Hobart.~~

PAID SICK LEAVE

Every full-time Employee with at least sixty (60) days of continuous full-time service with the Village shall be granted up to two (2) days paid sick leave annually on a calendar year basis for the sole purposes of:

- a) Illness or injury within the immediate family (defined as spouse and dependent children) needing assistance of the employee; or
- b) Medical/Dental appointments of the employee or immediate family.

This time does not accumulate and shall be used in at least ~~two (2)~~ **one (1)** hour increments.

~~This Letter of Understanding will expire at the end of the 2007-09 Collective Bargaining Agreement.~~

Statutory Standard:

The parties agreed that Section 111.70(4)(cm), Stats., lists the criteria to be used in this case as follows:

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. Stipulation 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 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 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 pension, 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.

Facts:

The Village of Hobart in 2000 had just over 5,000 residents and its population had risen 15.3% by 2010, to almost 6,000 residents. Hobart is located in northeastern Wisconsin, entirely within the historical boundaries of the Oneida Tribe of Indians Reservation and next to Green Bay's Austin-Straubel Airport. In 2008 the Village celebrated its centennial year, commemorating its long partnership with the Oneida Tribe among other things. According to State projections, Hobart's population is expected to increase by almost 222% by 2030, while Wisconsin's overall population is projected to increase during this period by only 17%. The Village covers approximately 33 square miles or just over 21,000 acres.

Most Village homes are single-family homes on lots larger than 1.5 acres. The Village has one of the lowest poverty rates (4%) in Wisconsin. In the Village, one out of three residents has a B.A. degree or higher. Village residents are served by two excellent public school districts—West De Pere and Pulaski.

The median home cost in the Village is over \$247,000, which is \$30,000 higher than the median home cost in the U.S. Almost 90% of Village residents own their homes as opposed to 64% across the nation; less than 3% of homes in the Village are vacant, while almost 15% of homes are vacant in the U.S.

The unemployment rate in Hobart is 4.6% and future job growth is predicted to be almost 16%. Median household income is over \$79,000 per year. In addition, despite a serious economic downturn across Wisconsin and the nation, the Village is fiscally sound and it received an upgraded bond rating from Standard and Poor's, from A+ to AA- in June, 2009.

In 2008, the Village purchased 350 acres on its northern boundary (State Highway 29) and began development of this acreage plus 603 acres in a Planned Development District. This area is known as "Centennial Center at Hobart" and is a mixed-use

commercial and multi- and single-family residential area. As of December 21, 2009, 50 new jobs were created due to the Centennial Center development.

For 2010, State shared revenue to Hobart decreased by \$16,000 and for 2010 the State-imposed levy limit cap is 3%. But for 2010 the Village increased its levy by only \$33,421, or 1.3%, over the 2009 levy to balance the budget after all revenues and expenditures were taken into account. Hobart's mill rate for 2009 and 2010 remained the same, \$4.10/\$1,000 of property value, due to a rise in assessed values and because expenditures fell by \$2,000 (Jt. Exh. 5). Indeed, the Village's historical mill rate has ranged, since 2000, from a low of \$3.33/\$1,000 (2002) to a high of \$4.98 (2006).

The largest Village taxpayer is the Oneida Tribe. Since at least 1998, the Village has opposed the Tribe's efforts to permanently remove Village land from the tax rolls and place it in Federal trust through application to the Bureau of Indian Affairs under the Indian Reorganization Act of 1934. The Village has spent over \$1.2 million in legal fees from 2007 through 2009, resisting the Tribe's efforts to place further Village land into Federal trust, and it projects that another \$233,500 in legal fees in 2010 will be needed to continue the fight. The 2008 legal fees paid by the Village exceed its entire 2008 payroll costs. Approximately 25% of the Village annual budget, or 10% of tax revenues received by the Village, will go to pay legal fees in 2010. The Village Board believes this is necessary because the Tribe has placed 1,600 acres into Federal trust prior to 2009. This means that no tax may be collected thereon but the Village must still provide police, fire, water and wastewater, road maintenance, garbage collection, and all other Village services for free to residents of this trust land.

As the original 65,000-acre Oneida reservation covered acreage in the Villages of Howard and Hobart, in Outagamie County, Green Bay, Ashwaubenon and the Town of Oneida in Brown County, the Tribe has been trying to purchase land in all of these communities since 1936. By 2020, the Tribe has stated it would like to acquire another 20,000 acres of its original reservation land. The Tribe now owns more than 15,000 acres in Outagamie County, 6,000 in Brown County, more than 6,000 in the Town of Oneida and just under 5,000 acres in the Village of Hobart. Only some of this land is in Federal trust as the Tribe must pay it off and then apply to place the land in trust with the BIA. The Tribe's move to put the remaining Hobart land into trust (3,400 acres) could take ten years to accomplish.

The Village employs six bargaining unit employees. Three are Public Works employees—one Water/Sewer Operator, and two Street Laborers. The Village's remaining three unit employees are the Deputy Clerk-Treasurer, the Police Clerk and the Court Clerk. These employees have been employed by the Village (on average) seven years. The Public Works employees are supervised by a non-unit Director (Rick Kinney) while the Deputy Clerk-Treasurer and Court and Police Clerks are supervised by the non-unit Clerk/Treasurer (Mary Smith) and/or Police Chief.¹

The Village is governed by a Village Board consisting of four Village Trustees and one Village President, all of whom are elected to overlapping terms. The Village Board appoints a Village Administrator to act as CEO of the Village, and he reports

¹ The Police Department has been a joint venture with the Village of Lawrence since 2001. In 2010, the Village went to a 24/7 Police Department with a full-time (35-hour) Chief, four full-time officers and two part-time officers, all of whom are non-union. Prior to 2010, the Chief had been part-time (26 hours). In 2009 the two part-time officers were hired.

directly to the Board. He supervises the Director of Public works, the Police Chief and the Clerk/Treasurer. The Village owns and operates two public parks (40 acres and 3 acres), which are cleaned and maintained by DPW employees. DPW employees also maintain and clean Village streets (including snow plowing, salting and paving roadways, maintaining lighting, signage and rights-of-way) and the Village sewer, storm sewer and water systems. The Village contracts for residential trash and recycling services. The Village has a volunteer fire department.

The first contract between the Village and the Union covered 2007-09. That agreement provided a 3% ATB wage increase each year for all unit employees. For 2010, non-unit personnel have been given a 0% increase but no formal action has been taken regarding a non-unit 2011 wage increase.

Positions of the Parties:

Union:

The Union asserted that on every issue herein, its offer should be preferred over the Employer's. The Union argued as follows. Regarding the Union's longevity proposal, the Union noted that its proposal would add only \$600.00 to 2010 costs and \$700.00 to 2011 costs; that the Employer's non-union employees enjoy longevity pay as proposed by the Union; and that the Employer has offered no basis for its refusal to extend this benefit to its six unionized employees.

Regarding the Employer's proposal to modify Article 8 to allow more than one DPW supervisor to perform on-call, pager and weekend rotation work and to perform other bargaining unit work, the Union opposed this proposal because it believed that the three unit DPW employees currently supervised by the current DPW supervisor have been and can be adequately supervised by one supervisor. The Union contended that at the instant hearing the Employer "admitted that it had no rational basis for this absurd proposal and withdrew it" (U. Br., p. 1). Thus, the Employer budgeted \$100,000 for an additional DPW supervisor, which it stated herein it had decided not to hire, and which is now available to pay for the Union's modest economic package.

Regarding the wage increase proposed by the Employer when compared with the Union's wage offer, the Union asserted that the Employer has offered no serious rationale for its 0% (2010) and 1% (2011) offer, except that it is worried about litigation expenses with the Oneida Tribe of Indians. The Union's offer of 1.25% ATB increases on January 1 and July 1, 2010 and of a 2% ATB increase on January 1, 2011 and 0.5% ATB on July 1, 2011, for a total cost increase less than \$18,000 per year is to be preferred over the Employer's very low offer of 1% over two years.

The Union argued that the record evidence weighs heavily in favor of its wage offer. For example, the Union noted that Hobart's population has increased 15.3% since 2000 and is projected to increase by 222% by 2030; that Hobart residents have the highest median family income in Brown County (over \$76,000); that Hobart has the lowest poverty rate (4%) in the state; and that Hobart residents are highly educated, with one-third possessing Bachelor's degrees. Hobart has a low crime rate and a low unemployment rate (4.6%); houses in the Village are mostly single-family on lots greater

than 1.5 acres; Hobart's bond rating was recently upgraded, and its 2010 Operating Budget is based on a levy of only \$2,601,904.

In these circumstances, the Union contended, there is no basis for a conclusion that the Employer cannot afford the Union's offer. The record showed that as of the date of this hearing 24 new homes had been started at Hobart, and 70 homes were projected to be built in Hobart in 2010; that new businesses, streets and subdivisions are being developed in the Village. The Union observed that the Village has generally prevailed in litigation with the Tribe, but even if the Tribe were successful in removing the proposed 2,600 acres from the Village tax rolls pursuant to pending litigation, the Village would only lose \$35,000 per annum in taxes.

Finally, the Union asserted that the Consumer Price Index (CPI) (which rose 3% from January, 2009 to January, 2010) and the external comparables (which offered their employees from 2% to 6% each year of two years) and the internal comparable on longevity, fully support the Union's final offer. The Union therefore urged the Arbitrator to select its final offer herein.

Village:

Regarding the interest and welfare of the public and the ability of the municipality to pay factor, the Village urged that its position is unique because all of its acreage is part of the original Oneida Tribe of Indians reservation. This means that pursuant to the Indian Reorganization Act of 1934, the Tribe could eventually purchase all Village land, seek to and succeed in placing the land in federal trust (making the lands non-taxable) and essentially eliminate the Village as an entity. Short of doing this, the Tribe's undisputed plans to acquire former reservation land and place it into trust would take property off the Village's tax rolls and yet the Village would still be required to provide services—at no charge—to those trust lands/residents. The Village stated that from 1936 to 1952 the Tribe placed 450 acres of Village land in trust. Currently 1,564 acres are in trust but if the Tribe is successful in placing additional acreage into trust status, up to 17% of the Village's tax base (4,200 acres) will be in trust. This makes budgeting for future expenditures difficult and threatens the very existence of the Village.

The Village has expended a large portion of its budget, since 1998, to challenge the Tribe's efforts to remove Village land from Village tax rolls. In 1998 such legal fees totaled 3% of the Village's total expenditures while today, they are projected to be ten times the 1998 figure, over \$310,000 for FY 2010. Village President Heidel stated that to date, by these efforts, the Village has successfully protected 2,673 acres from being placed in trust.

As a 2009 Beacon Hill Institute study (purchased by the Village) showed, 60% of the Village's total revenue is derived from property tax revenue. If the Tribe is successful in placing more and more land into trust, the Village will lose revenues and have to raise its mill rate to cover expenditures to tax-exempt Indian lands. Village President Heidel asserted that the Village will lose future development because of the Tribe's checkerboarding pattern of land purchases.²

² V. Exh. 30 was the only exhibit submitted on this point.

The pending lawsuits involve 490 acres in one case, 17 acres in another, and 68 acres of abandoned Wisconsin Central Railroad rights-of-way in a third. The Village urged that the Tribe's actions have had a significant negative impact on the parties' negotiations and that the Arbitrator should consider the interest and welfare of Village taxpayers on this point.

The Village turned to comparability and the composition of appropriate external comparables group. The Village noted that unit employees are the only unionized employees in the Village and that non-unit Village employees have taken 0% for 2010, and Village retirees have seen no increase in 2010 in their Social Security benefits.

The Village argued for its proposed comparability group, which included three non-union municipalities (Lawrence, Freedom and Ledgeview), three municipalities the Union suggested (Bonduel, Denmark and Suamico), and five other municipalities (Brillion, Combined Locks, Kimberly, Pulaski and Seymour), all of which are within a 30-mile radius of the Village.

The Village argued that population, geographic size, total property value and per capita property value and income are relevant in determining external comparability. The Village asserted its unionized comparables are all within 27 miles of the Village and have an average population of 4,239 (compared to the Village's 5,875).³ (Using all eleven Village comparables, the average population is 4,374 and the average distance from Hobart is 18 miles.) As the only information given by the Union regarding its comparables is population and a map showing approximate distances from Hobart, the Village urged that the Union there is insufficient record evidence to show that the Union's comparables should be included herein. The Village urged, in any event, that its comparables are sufficient for this analysis and they are closer to Hobart geographically than the Union's, with the exception of Howard. Regarding Howard, the Village argued that Howard is too large to be included among the comparables in this case. Therefore, the Village urged the Arbitrator to select its comparables and reject the Union's.

Regarding the wage issue, the Village noted that the average wage increases among its comparables was 1.57% in 2010 and 2.5% in 2011.⁴ Due to its split increases, the Union's offer reflects a 4.77% increase across 2010 and 2011, or a 1.89% and 2.88% increase each year, higher than the average of the comparables. In addition, the Village noted that each of the six unit employees' hourly rates will increase in excess of 5% from 2009; and that a 0% wage increase is not uncommon among the comparables as Brillion, Freedom, Lawrence, Ledgeview and Seymour's Clerks received no wage increases for 2010. The Village therefore urged the Arbitrator to find its offer the more reasonable one.

Regarding the Union's longevity proposal, the Village noted that the Union provided no evidence that it had offered a sufficient quid pro quo for the new benefit. The fact that Village non-unit employees have a longevity benefit is insufficient to prove a need for the change. In addition, the Union failed to show that longevity is supported by the comparables. Specifically, eight of eleven Village comparables have no longevity

³ Village Exhibit 15 listed all Village comparables (union and non-union) and showed that Hobart's population, total property tax, full value excluding TIF, state property tax, county tax and local tax were all significantly higher (at times, by more than 30%) than the average of the 11 comparables on each of these items.

⁴ The Village argued that 2009 increases should be used herein. This Arbitrator disagrees. The increase for 2009 was a voluntary settlement between these parties and it is not in issue herein, nor is it before me.

benefit. Whether all eleven comparables or only the unionized groups are considered by the Arbitrator on this point, the Union's \$100/\$200/\$300 longevity proposal is significantly higher than the comparables, as follows:

<u>Longevity</u>	<u>5 years</u>	<u>10 years</u>	<u>15 years</u>
Average of all Comparables	\$22	\$73	\$116
Average of Unionized Comparables	\$34	\$115	\$182

The Union's asserted quid pro quo, a reduction in vacation carryover, was insufficient to support the addition of a costly longevity benefit. The Village therefore urged the Arbitrator to reject the Union's longevity proposal as unsupported by the (required) evidence.

The Village then compared its employees' terms and conditions of employment to private sector employees, comparing the three Village clericals' (Deputy Clerk-Treasurer, Police Clerk and Court Clerk) mean and median Green Bay Area 2008 statistics for office and administrative support positions; which showed that the highest-paid Village clerical employee makes up to \$4.62 more per hour than the median private sector clerical employee. In addition, BLS statistics showed that maximum laborer and water and sewer operator rates in the Village for 2008 were \$17.05 and \$17.43, respectively, compared to BLS private sector rates for these positions at \$14.77 and \$15.72, respectively.⁵

The Village also observed that for a balanced view, the Arbitrator should consider Village and Wisconsin private sector health premiums and employee costs therefor. In this regard, private sector employees pay 22% to 26% of premiums while Village employees pay only 10% of premiums and Village plans are lower than those in the private sector by from \$1,947 per year (single) to \$1,587 per year (family).

The Village asserted that the CPI for 2009 and 2010, at -0.3% and 3.0%, also supports the Village's total package offer of 4.68% over the Union's total package offer of 8.24%. The Village then used total compensation to show that Village Laborer and Water/Sewer Operator rates are actually \$27.85 per hour and \$28.48 per hour, respectively under the Village's offer, a 1.9% increase for each position compared to the Unions 3.7% increase for these positions. The total dollar difference between the Village offer and the Union's offer, \$17,751, ignores the growing legal challenges facing the Village, the weakened economy, the unemployment rate, plant closings and layoffs, increased payroll and benefit costs for the Village (Village Exhibits 19, 21-22), making the Village's offer more reasonable.

Finally, the Village argued that since its bargaining unit work proposal will not displace, layoff or reduce the hours of any unit worker and it does not expand supervisory work, the proposal will not affect the unit. Also, the Village noted, the record showed that

⁵ Again, the use of 2008 Village statistics is inappropriate here, in the view of this Arbitrator. Village Exhibits 16 A & B support this view.

the Village has abandoned plans to hire a Public Works Director in 2010.⁶ In all the circumstances, the Village urged the Arbitrator to select its final offer.

Discussion:

Comparables:

The Union used seven comparables: Bonduel, Clayton, Denmark, Howard, Shawano Lake Sanitary District, Suamico and Wescott, all of which have contractual relationships with the Teamsters Union. These communities have populations ranging from 1,433 (Bonduel) to 15,755 (Howard).

The Union presented the following data on its proposed comparables:

	2010	2011
Bonduel (pop. 1,433)	3%	3%
Clayton (pop. 3,531)	6%	6%
Denmark (pop. 2,076)	2%	2%
Howard (pop. 15,755)	3.75%	-
Shawano Lake	2.50%	2.50%
Suamico (pop. 10,810)	2.50%	2.50%
Wescott (pop. 3,748)	2.75%	2.75%
Hobart- Union (pop. 5,694)	1/1/10 - 1.25% 7/1/10 - 1.25%	1/1/11 - 2% 7/1/11 - 0.5%
Hobart Employer	0%	1%

In contrast, the Village used eleven comparables within a 30-mile radius of the Village, which included three non-union municipalities (Freedom, Lawrence, and Ledgeview) and eight organized municipalities (Bonduel, Brillion, Combined Locks, Denmark, Kimberly, Pulaski, Seymour and Suamico).

The Village presented the following data on its proposed comparables:

⁶ The Village budgeted in 2010 to hire a DPW Director and as of the instant hearing, had taken no formal action to abrogate its decision on this point.

Municipality	Bargaining Unit / Non-Union Position	2009	2010	2011
Bonduel, Village	Teamsters Local 662	3.00%	3.00%	3.00%
Brillion, C.	AFSCME Local 1362	3.25%	0.00%	2.00%
Combined Locks, V.	AFSCME Local 2046	1/1 2.5%; 7/1 1.5%	Not Settled	Not Settled
	Deputy Treasurer-NU	3.00%	1.50%	Not Determined
Denmark, Village	Teamsters Local 57	3.00%	2.00%	2.00%
Freedom, Town	Laborer – NU	3.00%	0.00%	Not Determined
	Deputy Treasurer – NU	3.00%	3.00%	Not Determined
Kimberly, Village	AFSCME Local 130-D	3.00%	3.00%	3.00%
	Deputy & Court Clerk-NU	2.25%	1.00%	Not Determined
Lawrence, Town	Non-Union Positions	3.70%	0.00%	Not Determined
Ledgeview, Village	Non-Union Positions	0.00%	0.00%	Not Determined
Pulaski, Village	AFSCME Local 3055-E	3.00%	3.00%	Not Settled
	Non-Union Positions	1.00%	0%-4%	Not Determined
Seymour, City	AFSCME Local 455A	3.00%	Not Settled	Not Settled
	Bookkeeper/Deputy Clerk NU	3.00%	2.50%	Not Determined
	Clerk of Court	4.00%	0.0%	Not Determined
Suamico, Village	Teamsters Local 662	2.50%	2.50%	2.50%
AVERAGES	—	2.76%	1.57%	2.50%

City Offer

Hobart, Village	Teamsters Local 662	3.00%	0.0%	1.0%
------------------------	---------------------	--------------	-------------	-------------

Union Offer

1/1 1.25%	1/1 2.0%
7/1 1.25%	1/1 0.5%

Cost:	1.88%	2.25%
Lift:	2.50%	2.50%

These communities ranged in population from 2,132 (Denmark) to 10,945 (Suamico).

Given the fact that Bonduel, Denmark and Suamico were used by both parties, these are appropriate comparables in this case. In regard to the other comparables used by the parties, a close analysis of the data reveals several things. First, in the view of this Arbitrator, the Village comparables of Combined Locks and Seymour would otherwise be found comparable in this case based on geographic location, population, property values and similarity of unit positions involved. However, the wage information provided by the Village is insufficient to include these municipalities as comparables on wages at this time because their employees most similar to the Village's bargaining unit employees are not settled for 2010 and 2011. The fact that the Combined Locks Deputy Clerk/Treasurer, who is not part of the unit covering four classifications of Street Department employees in Combined Locks, agreed as an individual to take 1.5% in 2010 cannot fairly be used in this case to bind these parties regarding the Village's broader bargaining unit. The same is true of Seymour where the most recent contract expired in 2009 and the only Seymour employees who agreed to accept 2.5% (Bookkeeper/Deputy Clerk) and 0.0% (Clerk of Court) are not in Seymour's bargaining unit. So their agreements to a 2010 wage rate were individual agreements. Again, to bind the parties in this case to the rates agreed to by three or four individual Combined Locks and Seymour

employees would be inappropriate. However, the other terms and conditions of employment of Seymour and Combined Locks' unionized employees are certainly relevant and appropriate for use in this case.

In regard to the Village's proposed comparables of Brillion, Kimberly and Pulaski, this Arbitrator finds these are appropriate for use in this case in all respects based on the evidence provided by the Village showing that these communities are geographically proximate and have similar populations, property values and bargaining unit positions. In addition, some of the Village's children attend Pulaski public schools. Also, the Union presented no evidence to support a conclusion that these communities should be rejected as comparables herein.

More difficult is the Village's proposal to use Freedom, Lawrence and Ledgeview, all of which are non-union. The fact that employees in these communities have no labor organization to represent them in their wage negotiations and no grievance or interest arbitration and no statutory protections, at the least, put these employees on a different playing field than the Village employees involved herein: These three communities can impose whatever terms and conditions of employment on their employees they believe are fair and appropriate and their employees must accept the imposed wages and benefits or quit their jobs.

Having said this, there may be reasons to include non-union comparables in an interest arbitration case. Here, although a smaller municipality than Hobart, Lawrence is in the same county and is very close to Hobart geographically. In addition, it has property tax values and a population similar to those of the Village. But more significant than all of these similarities is the fact that Lawrence and Hobart are joint partners in providing police services to both communities. In this Arbitrator's view, this joint venture gives these municipalities a special bond which further supports a conclusion that Lawrence should be used herein as a comparable, and this Arbitrator so finds. However, there is insufficient evidence to support a conclusion that Freedom and Ledgeview should be used as comparables for unit Hobart employees based on the reasoning above.

This Arbitrator now turns to the Union's proposal to include Clayton, Shawano Lake, Wescott, and Howard. The Village has objected to their inclusion based on population—Howard is too large—and geographic location—these communities are all 40 to 56 miles removed from Hobart. The Village also argued that the Union has failed to provide other evidence of comparability, such as total property values, per capita property values and income to assist the Arbitrator in her analysis of these communities.

Regarding Wescott, this Arbitrator agrees with the Village's arguments that this municipality should be excluded from the comparables herein, for several reasons. Wescott is more than 55 miles from Hobart. Given the greater employment opportunities in the Green Bay/Fox Valley area, it is unlikely, in the Arbitrator's view, that Hobart residents would travel more than 55 miles from home to seek work and that they would then commute daily more than 110 miles to and from work. In addition, this Arbitrator notes that the bargaining unit in Wescott is extremely limited, covering only Working Foremen and Laborers. These facts seriously undercut the Union's assertion of Wescott's comparability to Hobart. This Arbitrator finds Wescott should be excluded from the comparability group herein.

Regarding Shawano Lake, this Arbitrator notes that the bargaining unit there contains at least one clerical employee, Billing Clerk, Water/Sewer Operators as well as

Laborers. Thus, there is only one classification in Hobart that is not covered in the Shawano Lake contract, the Deputy Clerk/Treasurer. Also, Shawano Lake Sanitary District is within 40 miles of Hobart and the City of Shawano has a current population of just under 8,200, which is within the size range (1,436 to 15,755) of the other comparables. In all the circumstances, this Arbitrator finds that Shawano Lake should be included in the comparability pool here which includes proposed communities/entities within a 40-mile radius of Hobart with populations from 1,436 to 15,755 and an employee complement similar to Hobart's, as follows:

Combined Locks, Seymour, Lawrence, Shawano Lake,
Clayton, Howard, Brillion, Kimberly, Pulaski, Bonduel,
Denmark, Suamico.

Final Offers:

As a preliminary matter, neither party presented any evidence herein to show that the "greatest weight factor under Section 7 of the statute is involved here. In fact, the Village asserted herein, without contradiction, that only Section 111.70(4)(cm) 7r, subsections c, d, e, f, h and j, Stats., are relevant to this case (ER Brief, p. 5).

The Village argued in depth that its position is unique because of its relationship with the Oneida Tribe of Indians, because the Tribe is bent on repurchasing Village property and placing it into Federal trust, exempting it from taxation but nonetheless leaving the Village responsible to provide all services to the trust land. On this basis, the Village argued its economic offer should be selected over the Union's as the Subsection 7r(c) factor, the interest and welfare of the public/financial ability to pay for the Union's proposal (and its other obligations including legal fees to resist the Tribe) supports the Village's offer.

This Arbitrator agrees with the Village that it has been put in an unusual position by the fact that all Village land is part of the Tribe's original Reservation and therefore is potentially subject to being placed in Federal trust should the Tribe repurchase it, pay it off and successfully petition the U.S. government to have the lands placed in trust. However, for the following reasons, this Arbitrator does not find the Village's evidence on this point persuasive in this case.

In support of its position, the Village placed a Beacon Hill Institute study into the record which addressed various scenarios regarding tax base issues raised due to the relationship between the Village and the Tribe (V. Exh. 26). In the view of this Arbitrator, this study shows that it would take 40 or 50 years to actually eliminate the Village as an entity due to the Tribe's purchase and removal of Village lands from the Village tax rolls; and that only if taxable Village land shrinks significantly over the next ten years, will the mill rate have to be raised greatly to make up for the loss of tax revenue and to avoid deficits. Because the truly negative affects of the Tribe's actions toward the Village will be felt far in the future, this Arbitrator does not find this evidence particularly helpful in this case as it is for the most part inapplicable to the facts proven here concerning the current state of the Village's finances and the appropriate wage and benefit package for unit employees.

Regarding the Village's financial status, and the economic condition in the surrounding area, the record facts showed that in general, Hobart is in good financial shape, compared to other Wisconsin municipalities. For example, the Village's mill rate has declined by 88¢/\$1,000 of property value since 2006; and the mill rate for 2010 is the same (\$4.10/\$1,000) as it was in 2009. The state-imposed cap on property tax levies is 3% in 2010. The Village increased its 2010 levy by only 1.3% in 2010 (\$33,421) over the 2009 levy. Also, the Village's population is growing and it has very low poverty and unemployment rates. Its residents, on the whole, are highly educated, they live in expensive single-family houses, and the median household income is high. The Village's bond rating has been upgraded since June, 2009, despite the serious downturn in the economy across Wisconsin and the nation,⁷ and in 2010, construction began on 24 new houses with a total of 70 houses projected by the Village to be built in 2010. All of this evidence demonstrated Hobart's financial/economic health in 2010.

Regarding the specific record facts concerning the Village's relationship with the Tribe, since 1936, the Tribe has only succeeded in placing just under 1,600 acres of Village land into Federal trust. It is also significant that the Tribe owns acreage in a number of other municipalities: the Village of Howard, Ashwaubenon, Green Bay, and the Town of Oneida, a total of 1,000 acres, which were also part of the tribe's original 65,000-acre reservation. Thus, Hobart is not alone in its relationship to the Tribe. But Hobart has chosen to resist the Tribe's efforts to place any further Village lands into trust by litigating every issue. This decision was clearly the Village's to make, but it has cost the Village over \$1.2 million in legal fees from 2007 through 2009 and the Village has budgeted another \$233,500 for legal fees in 2010, or 25% of its annual budget.

Even if the Tribe is successful in removing the 2,600 acres from Village tax rolls now under pending litigation, it could take up to ten years for the litigation to be concluded and the lost tax revenues on that land would only amount to \$35,000 per year. Thus, in this Arbitrator's view, the Village's arguments on this point are insufficient to trump the weighty record evidence concerning external comparables and the positive evidence of economic conditions in Hobart and the Hobart area.⁸

1) Wages

The Village argued that the "internal comparables" support its 0% in 2010 and 1% in 2011 offer to unit employees. In this regard, this Arbitrator notes that Village non-unit employees are not represented by a labor organization so the Village has imposed the wage freeze on them for 2010. Also, although the Village has given these non-union employees 0% in 2010, the Village had taken no action as of the date of this hearing regarding the 2011 increase for these non-union employees. In the view of this Arbitrator, the non-union employees in the Village do not provide compelling evidence in support of

⁷ Village Exhibits 19, 21 and 22 provided general information on the state of the economy in Wisconsin which was not particular to Hobart. Therefore, this Arbitrator has used Joint Exhibit 5, the Village's budget document for the majority of the facts herein.

⁸ Section 111.70(4)(cm) 7g, Stats., addresses the need to give "greater weight" to economic conditions in the jurisdiction of the municipal employer. The evidence proffered by the Village was insufficient to show economic conditions in the Hobart jurisdiction were significantly negatively affected by the economy or Hobart's relationship to the Tribe to trigger treatment under Subsection 7g.

the Village's two-year final offer because the Village has taken no formal action to impose a 1% increase on these employees' wages in 2011.

The Village calculated that its final offer would result in total package increases of 1.84% and 2.84%, respectively. This was due to a 13.1% increase in 2010 health insurance premiums, a 15% increase in 2010 dental premiums and a 0.6% WRS increase in 2010 and estimated increases in these items (11% health, 10% dental, 0.6% WRS) for 2011. With its brief, the Village submitted a revised total package costing of the Union's final offer, showing selection of the Union's offer of a 1.25%/1.25% split would result in a 1.89% increase in wages overtime, and with longevity this would rise to 2.19% in 2010, and that for 2011 the Union's offer of a 2.0%/0.5% split would result in increased wages of 2.96%;⁹ and that the total package figures for the Union's wages are 3.74% and 4.5% in 2011. The Village also calculated that the total new dollar difference between its offer and the Union's offer to equal \$6,052 in 2010 and \$11,698 in 2011 for a total difference of \$17,750 across the two years of the agreement.¹⁰

Having considered the evidence and argument herein, this Arbitrator concludes that on the wage issue, which is the most important issue in this case, the Union's final offer is to be preferred and it is selected, based on the following analysis of the evidence and argument. Initially, this Arbitrator notes that although she has found Combined Locks and Seymour should be included in the comparables group here, since no data is available regarding 2010 and 2011 wages for these municipalities, they cannot be considered in assessing wage comparability herein. Also, in the following analysis, this Arbitrator has showed the averages of the comparables if Howard is excluded and if the highest and lowest wage settlements are excluded. Also, where no settled wage was available the total number of comparables was reduced in finding the averages.

	Wages	
	<u>2010</u>	<u>2011</u>
Bonduel	3%	3%
Brillion	0%	2%
Clayton	6%	6%
Denmark	2%	2%
Howard	3.75%	Not Settled
Kimberly	3%	3%
Lawrence (NU)	0%	Not Determined
Shawano Lake	2.5%	2.5%
Suamico	2.5%	2.5%
Pulaski	3%	Not Settled
<u>Average</u>	2.575%	3.0%
Average w/o Howard	2.444%	3.0%

⁹ The Village used the cast forward method which resulted in \$700.00 longevity in 2010 and \$900.00 longevity in 2011 while the Union used actual figures of \$600.00 and \$700.00 respectively for longevity.

¹⁰ Figures in Village Exhibit 8 were revised in accord with amended calculations contained in the Village's brief. The latter corrected figures will be used herein.

Average w/o Clayton and Lawrence	2.468%	2.5%
--	--------	------

Hobart

Village:	0%	1%
Union:	1/1 1.25%	2%
	7/1 1.25%	0.5%
--Cost	1.88%	2.25%
--Lift	2.5%	2.5%

In the view of this Arbitrator, the above analysis shows clearly that the Union’s final offer on wages is more reasonable than the Village’s offer. If the Village offer were selected, Village unit employees would receive from 2.44% to 2.57% less than the averages of the settled comparables for 2010 and from 1.5% to 2.0% less than the averages of the settled comparables above for 2011. By selection of the Union’s final offer, Village unit employees will receive from 0.04% less to 0.075% more than the averages of the comparables above. Depending on what the 2011 settlements are for Howard, Lawrence, Pulaski and Combined Locks and Seymour, selection of the Village’s final offer would likely cause a change in the Village’s position vis-à-vis the comparables. Even if the highest and lowest paid comparables (Clayton and Lawrence) are excluded, the Union’s wage offer is still preferred over the Village’s wage offer. Also, the Union’s wage offer would also be preferred if Howard were excluded, as the Village requested herein. Furthermore, Village Exhibit 18 showed that compared to its proposed comparables, incumbents of Village unit positions have lagged behind in wages in past years (except for the Deputy Clerk/Treasurer). Also, we have no total package costs for any of the selected comparables here so it is impossible to compare total package costs.

The Village President made the case herein that a major reason why the Village offered 0% and 1% was because of the Village’s ongoing relationship with the Oneida Tribe and because of the Tribe’s continuing efforts to remove land from Village tax rolls. In this Arbitrator’s view, a shifting of the financial burden for the Village’s decisions regarding the direction of its relationship with the Tribe and pending litigation against the Tribe to unit employees is inappropriate. Here, the Union has no control over whether the Village does or does not pay for legal representation against the Tribe. Nor does the Union have control over the actions of the Tribe—whether or not the Tribe buys Village land and/or has that land placed in Federal trust, exempting it from taxation. The interest and welfare of the public may indeed be to fight the Tribe’s placement of Village land in trust. That is a decision the Village must make. But the Village’s decision to expend funds necessary to continue to fight Tribal actions does not lessen or detract from the Village’s responsibility to fairly compensate its employees in accord with comparable municipalities under Chapter 111.70.

It is important to note that the Village did not raise its mill rate for 2010 and that it increased its 2010 levy by only 1.3%, and yet it substantially increased its expenditures for police and fire services in 2010 and set aside \$100,000 to hire another DPW Supervisor while it virtually froze pay for two years for unit employees. These facts, along with the fact that the Village is enjoying a healthy financial condition, which the record showed will continue to improve in the future, support a conclusion that the Village's offer should not be selected based on the Subsection 7r(c) factor, the interest and welfare of the public and financial ability to pay.

The Village has argued that the Village's offer exceeds the CPI. In this regard, this Arbitrator notes that the CPI-W and CPI-U were positive numbers for five months in 2010 and that as of May, 2010, the CPI-U annual increase was 2.0%, while the CPI-W, as of May, 2010, was 2.6%. This puts the Village's evidence (V. Exh. 13) regarding the CPI in 2009 into perspective. The CPI-U was a negative number for eight months in 2009 and the CPI-W was a negative number for ten months in 2009. However, from January, 2009, to December, 2009, the CPI-U went up 2.7% and for the same period the CPI-W increased by 3.4%, showing that the economy is slowly improving in 2010.

The Village argued that its represented employees receive a lucrative wage and benefit package compared to private sector workers and it presented evidence showing the wages and health benefits of private sector employees to support this argument. In this regard, this Arbitrator notes that health insurance is not in dispute in this case. The fact that private sector employees pay from 22% to 26% of the premiums for their health insurance while the comparable public sector employees herein pay from 7% to 15% is not unusual in Wisconsin.¹¹ Also, a comparison of private sector wages to public sector wages is made difficult because the positions are often substantively different and are therefore not truly comparable. In this regard, this Arbitrator notes that the evidence showed that Hobart wage rates for Wastewater and Water Operators and Laborers have generally lagged behind the average of the Village's comparables (by up to \$1.44 per hour) but that the Deputy Clerk/Treasurer and the Court and Police Clerk have been paid substantively better than the average of the Village's comparables (by up to \$2.00 per hour) (V. Exh. 18).¹²

Despite the detailed evidence proffered by the Village on these points, it is my opinion that this evidence does not outweigh the weighty evidence concerning the external public sector comparables selected herein which showed that the Village's final offer on wages was simply too low in all the circumstances.¹³

¹¹ Denmark, Hobart, Kimberly, Suamico and Seymour employees pay 10% of premiums. One comparable, Pulaski, requires employees to pay 15% of premiums. Four of the comparables, Howard, Bonduel, Shawano Lake and Clayton, have dollar amounts in their contracts and employee contributions equal 10%. Lawrence allows three of six employees to receive reimbursement for health insurance. In Combined Locks, employees pay from 8% to 9% of premiums and employees in Brillion pay 7% to 8% of premiums.

¹² It is significant that the Court and Police Clerks and the Deputy Clerk/Treasurer positions if they exist in the Village's comparable groups are mostly non-union while the Operator and Laborer positions are represented.

¹³ In considering ability to pay, Joint Exhibit 5 showed that in 2010 the Hobart Police Department budget increased by 6.64% and the Village Fire Department budget increased by 4.86%. Although the fire department appears to be staffed mostly by volunteers and police officers are unrepresented, these employee groups constitute internal Village comparables whose workers will see a 35.59% increase (fire) and a 6.86% increase (police) in 2010.

2) Longevity and Bargaining Unit Work

The two remaining issues in this case are, in this Arbitrator’s view, not determinative of this dispute, but they are nonetheless important to the future of the Village and the Village unit employees.

Regarding the Village’s unit work proposal, this Arbitrator notes that Howard (DPW only), Seymour and Suamico have provisions very like the one in Hobart’s expired contract; that Brillion, Kimberly, Clayton, Bonduel and Denmark have lesser provisions; and Combined Locks, Shawano Lake, Howard (office), Pulaski, and Lawrence have no unit work provision. These provisions vary but the majority of them preserve unit work hours, traditional unit work and assure that no unit employees will be laid off but allow training time and for work to be reassigned in emergency situations. This Arbitrator notes that the Village’s proposal continues to protect unit employees against displacement, layoffs and hours reductions, but would allow two supervisors to perform unit work including on-call and weekend notation and pager work.

At the instant hearing, Village Administrator Vickers admitted that the Village had no intention of creating the new DPW Director position in 2010, which was expected to cost the Village \$100,000. In essence, the Village admitted herein that it had no need to change the language of Article 8 because it had no intention of hiring a new DPW Director. In these circumstances, the fact that this Article 8 proposal is included in the Village’s final offer should be counted against the Village’s overall final offer. This is so because the proposal is admittedly premature. Although the language appears to maintain protection of unit employees against displacement, layoffs, reductions in hours and reduction in the overall workforce, the potential for disputes and/or grievances being filed over the new language is high. This Arbitrator finds that this proposal weighs against selection of the Village’s offer here.

This Arbitrator now turns to the Union’s longevity proposal. The Village has correctly observed that a majority of the selected comparables do not have a longevity benefit for their employees: Bonduel, Combined Locks, Denmark, Kimberly, Lawrence, Suamico and Clayton. But five comparables, Brillion, Seymour, Pulaski, Howard and Shawano Lake have varying longevity provisions. The following compares the longevity benefits among the comparables that have the benefit:

Municipality	Contract Duration	Benefit	Benefit At “x” Yrs of Service		
			5	10	15
Brillion, City	2009-11	After 10 Years	\$0		
		After 15 Years	\$208	\$312	
		After 20 Years			
		After 25 Years			
Howard	2008-10	5 to 9 Years	\$100	\$200	\$300
		10 to 14 Years	\$200		
		15 Years and Over	\$300		
Shawano Lake	2009-11	5 to 9 Years	\$400	\$500	\$900
		10 to 14 Years	\$500		
		15 Years and Over	\$900		
Pulaski, Village	2009-10	8 years of service	\$0	\$120	\$240
		12 years of service	\$20/mo.	\$240/yr.	

		16 years of service	\$30/mo.	\$360/yr.			
Seymour, City	2007-09	After 3 Years	\$120/yr.		\$240	\$480	\$720
		After 5 Years	\$240/yr.				
		After 8 Years	\$360/yr.				
		After 10 Years	\$480/yr.				
		After 12 Years	\$600/yr.				
		After 15 Years	\$720/yr.				
		After 20 years	\$840/yr.				

Average Benefit @			
5 Yrs	10 Yrs	15 Yrs	
\$148	\$301	\$494	
Hobart, Village	Village Offer	Status Quo – No Benefit	
	Union Offer	Completion of 5 – 9 Years	\$100
		Completion of 10 – 14 Years	\$200
		Fifteen or more years	\$300

Given the above analysis, it is clear that longevity is a significant benefit for five or 42% of the selected comparables and that the Union’s offer herein is below the average of the benefits granted. The fact that non-represented Village employees have the same longevity benefit the Union has offered here shows that longevity is not a new concept in the Village. Also, the terms of the Union’s offer support a conclusion that the Union’s offer is neither excessive nor provocative.¹⁴

The Union asserted that the quid pro quo for the new longevity benefit it offered herein was the change it agreed to in Article 14. That change is a restriction on vacation carryover, going from ten days to five days carryover. The Village argued that the Article 14 change does not constitute a sufficient quid pro quo to support the addition of the new longevity benefit.

This Arbitrator has studied the comparables and found that seven comparables, Brillion, Pulaski, Kimberly, Seymour, Bonduel, Combined Locks and Lawrence, allow no vacation carryover. In contrast, Denmark and Shawano Lake allow unlimited carryover. Suamico allows five days carryover, Howard allows ten days carryover and Clayton allows vacation accumulation up to twice the employee’s annual earned vacation. As the 2007-09 labor agreement was a voluntarily settled initial contract, it is very unlikely that the Village could successfully take a limitation n vacation carryover into interest arbitration, even though the majority of the selected external comparables have no vacation carryover provision. This reality supports a conclusion that the Union’s agreement to change Article 14 has value.

In a small bargaining unit like that at the Village, with no part-time unit employees to fill in, having a ten day vacation carryover could cause significant work flow problems for the Village, either requiring it to pay other employees substantial overtime pay or to hold projects and daily work until the return of vacationing employees. In this regard, this Arbitrator notes that three Village unit employees (two Clerks and one DPW Laborer) have nine or more years of seniority, which means that under Article 14 of the expired contract these employees could potentially take up to 31,

¹⁴ A Union offer higher than \$100/\$200/\$300 could have caused problems in the Village with non-represented employees who would have wanted an increase in their existing benefit.

30 and 29 days off in a row under the original version of Article 14. In these circumstances, this Arbitrator believes the Village would definitely benefit from a reduction in the allowed accumulation of vacation days from ten days to five days, although it is difficult to ascribe a monetary value to that benefit.

All in all, this Arbitrator believes that the Union's agreement to change vacation carryover has a real value to the Village. However, whether that value is sufficient to support a new benefit, like the proposed longevity benefit here, is another matter. In this regard, this Arbitrator notes that currently, three Village employees who have less than five years' tenure will not be eligible to receive any longevity during the term of the 2010-11 labor agreement; two Village employees have ten or more years' tenure now, and one employee will have ten years' tenure in 2011. These three unit employees will receive longevity during the term of this agreement if the Union prevails. But none of the unit employees will reach 15 years' tenure before the expiration of this agreement. Therefore, the cost of the longevity benefit would be relatively small for this unit of six employees.

However, in deciding this issue, this Arbitrator notes that the Union did not attempt to prove a need for the change except to say that unit employees wanted the same longevity enjoyed by non-represented Village employees and that some comparables (five of twelve, or 42%) have longevity. As this would be a new benefit for Village unit employees, demonstration of a need for the change, significant support among the comparables and proof that the Union gave a quid pro quo for the benefit are necessary for the Union to have a clean win on this issue. Although there is some comparability support (external and internal) and some indication that the vacation carryover change has value to the Village, the evidence is insufficient to support a conclusion that the Union's offer on this point is more reasonable.

Given the evidence on this issue and the fact that selection of the Union's final offer herein could tip the scales for the Union in seeking longevity in other comparable communities, this Arbitrator finds that the Union's longevity proposal weighs against selection of the Union's final offer. However, because the wage issue is the most important issue herein and because the Village's wage offer was so inordinately low, the negative impact of the Union's longevity offer is insufficient to require selection of the Village's final offer.

Based on the relevant evidence and argument and the above analysis, this Arbitrator issues the following

AWARD

The Union's final offer, quoted above, is selected.

Dated and signed this 6th day of July, 2010, at Oshkosh, Wisconsin

Sharon A. Gallagher