ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between CITY OF OCONOMOWOC And AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL UNION #1747 AFL-CIO	Interest Arbitration Case XXII No. 25814 MED/ARB-632 Decision No. 17730-A

Impartial Mediator-Arbitrator

William W. Petrie
1214 Kirkwood Drive
Waterford, Wisconsin 53185

Mediation Hearing Held

June 5, 1980
City Hall
Oconomowoc, Wisconsin

Arbitration Hearing Held

July 21, 1980
City Hall
Oconomowoc, Wisconsin

Persons Present

For the Employer

Mr. Roger E. Walsh
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For the Union

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BACKGROUND OF THE CASE

This case is a statutory interest arbitration proceeding between the City of Oconomowoc, Wisconsin and Local Union #1747 of the American Federation of State, County and Municipal Employees, AFL-CIO.

The parties' last prior labor agreement expired on December 31, 1979, after independent labor negotiations had failed to result in a renewal agreement. The Union filed a petition with the Wisconsin Employment Relations Commission on February 27, 1980, in which it alleged the existence of an impasse between the parties, and requested the initiation of statutory mediation-arbitration. The matter was preliminarily investigated, after which the Commission, on April 3, 1980, issued the appropriate findings of fact, conclusions of law, certification of the results of investigation and an order requiring mediation-arbitration.

On April 21, 1980, the Commission issued an order appointing the undersigned to act as mediator-arbitrator, in accordance with the provisions of the Municipal Employment Relations Act. Preliminary mediation took place between the parties and the Mediator on June 5, 1980, but the parties remained unable to reach a negotiated settlement of the dispute. The undersigned then determined that a reasonable period of mediation had taken place, and that it was appropriate to proceed to final and binding arbitration of the dispute; appropriate written notification of these findings was supplied to both of the parties and to the Commission on June 6, 1980.

The interest arbitration hearing took place in Oconomowoc on July 21, 1980, at which time both parties received a full opportunity to present evidence and argument in support of their respective positions. Both parties submitted post-hearing briefs, after which the hearing was closed by the Arbitrator on September 12, 1980.

THE FINAL OFFERS OF THE PARTIES

The impasse items before the Arbitrator and reflected in the parties' final offers, include wages, vacation scheduling, shift differentials, and holiday overtime rates.

In connection with the proposed general wage increases for calendar year 1980, the Union requests an increase of 67¢ per hour, while the Employer offers an increase of 60¢ per hour.

The Union proposed changes in current vacation scheduling practice, which would allow members of the bargaining unit to take up to two days per year of vacation in one-half day increments. The Employer proposes continuation of the present contract provision, which requires vacations to be taken in no less than full day increments.

The Union proposes an increase in shift differential to a total of 15¢ per hour, while the Employer suggests continuation of the current 13¢ per hour allowance.

the costs of any proposed settlement.

d) Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.

e) The average consumer prices for goods and services, commonly known as the cost-of-living.

f) The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, and continuity and stability of employment, and all other benefits received.

g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

h) 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."

POSITION OF THE UNION

In support of its final offer relative to wages, holiday overtime, night shirt premiums, and vacation scheduling, the Union offered a variety of arguments.

(1) It particularly emphasized the cost-of-living criterion, urging the Arbitrator to place primary reliance upon this factor;

(2) In applying the comparison criterion, the Union urged the Impartial Arbitrator to include the cities of Brookfield, Menomonee Falls and Waukesha, in Waukesha County, the cities of Jefferson, Watertown and Fort Atkinson, in Jefferson County, the cities of Germantown and Hartford, in Washington County, and the city of Whitewater, in Walworth County.

(3) It urged the rejection of various municipalities offered by the Employer for comparison, on the grounds of population, proximity to the Milwaukee metropolitan area, and/or dissimilar economic considerations; on these bases, it suggests the exclusion from consideration of Delavan, Beaver Dam, Mayville, Waupun, Horicon and West Bend.

(4) In connection with the merits of its wage increase offer, the Union offered the following primary arguments:

(a) That a ranking of the pay in comparable communities for the Laborer, the Sewer Treatment Plant Operator, and the Truck Driver classifications shows the Union's rather than the Employer's final offer to be the more appppropriate;

(b) That the cost-of-living in metropolitan Milwaukee increased 48.1% between January 1, 1976 and January 1, 1979, at a time when bargaining unit wages increased only 26.1%; that a higher wage increase is needed to restore purchasing power to those in the bargaining unit;

(c) That the 10% wage increase offer of the Union,

more closely approximates anticipated rises in the cost-of-living for calendar year 1980;

(d) That even the Employer's suggested comparisons support the position of the Union, in that eight of thirteen employers had increases in excess of the 9% offered to the Truck Drivers, and nine of thirteen offered greater than an 8.4% increase to Mechanics;

(e) That intra city settlements within the Police and the Utility bargaining units are more competitive than the increases offered here; that the former received wage increases of 9.25%, while the latter received 70¢ per hour increases, averaging 8.3%. Despite these settlements, that the City has offered the lowest dollar increases to the City's lowest paid group of employees.

(5) In connection with the holiday pay dispute, the Union offered the following primary arguments;

(a) That four of nine comparable communities already have double time for holidays, contrary to the assertions of the Employer in this regard;

(b) Accordingly that the comparison criterion supports the position of the Union.

(6) In connection with the night shift premium dispute, the Union offers the following primary arguments:

(a) That of eight comparable communities, only two have more than one shift; that one of these pays 15¢ per hour and 20¢ per hour on the second and third shifts, while the second pays 10¢ and 15¢ per hour, respectively, for the two shifts;

(b) That the cost-of-living criterion also strongly supports an increase in this fringe benefit.

(7) In connection with its request for the right to schedule certain vacation days in one-half day increments, the Union cites such a practice amongst Oconomowoc's Utility employees; this internal comparison, it asserts, strongly justifies the same practice in the bargaining unit.

POSITION OF THE EMPLOYER

In support of the contention that its offer is the more appropriate of the two before the Impartial Arbitrator, the Employer emphasized the following principal arguments.

(1) It urged the Arbitrator to place primary reliance upon the thirteen municipal comparisons urged by it, rather than upon the nine comparisons suggested by the Union; in this connection it argued basically as follows:

(a) That the Milwaukee suburbs of Brookfield, Menomonee Falls and Germantown should not be considered in these proceedings; that normal arbitral practice justifies the exclusion of these municipalities from consideration, due to their close proximity to Milwaukee, which is not shared by Oconomowoc;

(b) That the average population of the nine communities suggested by the Union is almost double that of

Oconomowoc, with two of the suggested Milwaukee suburban communities having particularly large populations; conversely, that the thirteen communities selected by the Employer average between twelve and thirteen thousand in population, which is close to the population of Oconomowoc;

(c) That the comparisons selected and urged by the City are consistent with those selected and applied by Arbitrator Fields in a 1979 arbitration involving the police bargaining unit.

(2) In support of its final wage offer, the City offered the following basic arguments:

(a) That the City's wage increase offer is substantially greater than the average increase for similarly classified employees in comparable communities; that this is true when either a cents per hour or a percentage comparison is used;

(b) That actual wage rate comparisons for various classifications support the Employer's final offer; specifically, that the laborers, truck drivers and the mechanics would rank second of fourteen communities, while the heavy equipment operator and the wastewater operator classifications would rank third and fifth respectively; further, that laborers' wages would average 50¢ per hour above average comparables, with truck drivers 69¢ ahead, mechanics 84¢ ahead and wastewater operators receiving 50¢ per hour above the comparable averages;

(c) That intra-city comparisons also support the final offer of the Employer; specifically cited were the 1980 wage increases for police and for utility employees, which averaged 9.25% and 8.3% respectively;

(d) That consumer price increase data is not as important in this dispute as comparison data and, further, that movement in the CPI is inaccurate and overstates actual increases in cost-of-living; that interest arbitrators generally recognize the difficulty in basing decisions upon CPI increases;

(e) That no reasonable basis exists for selecting the Union's rather than the Employer's final wage increase offer.

(3) In support of its proposal to continue to require vacation days to be taken in at least full day increments, the Employer emphasized the following principal arguments:

(a) That practices in comparable communities do not support the Union's request for the use of vacations in one-half day increments; that only one of the fourteen communities specifically allows such a practice;

(b) That the one day increment requirement was inserted into the 1976-1977 contract by specific agreement of the parties; that it is inappropriate to change such agreements of the parties through the arbitration process;

(c) That the use of one-half day vacations, would create serious work scheduling problems for the Employer.

(4) In support of its suggestion for no increase in current shift premiums, the Employer cited the following basic arguments:

(a) That there is no basis for increased shift premiums in the practices of comparable communities; in point of fact that several of the communities have no shift premiums;

(b) That present wage rates are generous and adequate, and that there is no equitable basis for an increase in shift premiums.

(5) In support of its position that the present time and one-half premium for holiday overtime should be retained, the Employer presented the following principal arguments:

(a) That ten of thirteen comparable communities pay time and one-half rather than double time;

(b) That the higher overall level of wages already paid, does not support the request for an increase in holiday premiums.

(6) That the overall level of benefits already available to bargaining unit employees supports the City's final offer; specifically, that current holiday, longevity, vacation and sick leave practices illustrate the excellent level of benefits already available to those in the bargaining unit.

In summary, the Employer emphasizes comparisons, alleges the inappropriateness of awarding unusual benefits in the arbitration process, and cites the overall level of benefits already enjoyed by those in the bargaining unit; it submits that there is no reasonable basis for arbitral selection of the final offer of the Union in these proceedings.

FINDINGS AND CONCLUSIONS

During the course of deliberation, the Impartial Arbitrator has given consideration to each of the arbitral criteria specified by the Legislature in Section 111.70.(4)(cm)7 of the Wisconsin Statutes. Particular attention has been addressed to the following criteria, which were particularly emphasized by either or both of the parties:

(1) The comparison criterion as referenced in sub-paragraph (d);

(2) The cost-of-living criterion as referenced in sub-paragraph (e);

(3) The overall compensation criterion as referenced in sub-paragraph (f);

(4) The negotiations history criterion as permitted by sub-paragraph (h).

Despite the fact that the Arbitrator is limited in his authority to the selection of the final offer of either party in its entirety, for the purpose of clarity, each of the impasse items will be preliminarily discussed in light of the statutory criteria.

The Wage Increase Impasse

The major dispute between the parties relates to the relative

merits of the Employer's sixty cents per hour wage increase offer, versus the Union's sixty-seven cents per hour wage increase demand.

Although the Legislature did not see fit to indicate any priorities of relative importance between the various arbitral criteria, there is no doubt that the comparison factor is the most extensively used and the most significant criterion in resolving interest disputes. This point is well described in the following excerpt from the book by Elkouri and Elkouri: 1./

> "Without question the most extensively used standard in 'interest' arbitration is 'prevailing practice'. This standard is applied, with varying degrees of emphasis in most 'interest' cases. In a sense, when this standard is applied the result is that disputes indirectly adopt the end results of the successful collective bargaining of other parties similarly situated. The arbitrator is the agent through whom the outside bargain is indirectly adopted by the parties."

The same thoughts are expressed in the following extract from the authoritative book on wage arbitration by Irving Bernstein:2./

> "Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill. In the presence of internal factionalism or rival unionism, the power of comparison is enhanced. The employer is drawn to them because they assure him that competitors will not gain a wage-cost advantage and that he will be able to recruit in the local labor market. Small firms (and unions) profit administratively by accepting a ready-made solution; they avoid the expenditure of time and money needed for working one out themselves. Arbitrators benefit no less from comparisons. They have 'the appeal of precedent and.. awards based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public'."

The mere enunciation of the principal that comparisons are the most important and most extensively used interest arbitration criterion, does not solve the more basic question of which employers should be used for comparison purposes. In this area, the parties differed significantly in their recommended municipal comparisons, and neither party cited any private sector comparisons.

(1) The Union sought the exclusion of municipalities that were either small in size, remote geographically from the Milwaukee metropolitan area, or which it felt were not similar economically to Oconomowoc.

(2) The Employer sought the exclusion of most cities that it regarded as suburbs of Milwaukee, suggesting the exclusion of Brookfield, Menomonee Falls and Germantown; it agreed with the Union relative to the use of comparative data from six communities.

Both parties have offered persuasive arguments in support of their respective positions relative to the appropriate comparsions. The Employer is quite correct relative to the normal practice relative to arbitral consideration of urban/rural differences in comparative wages. This factor is addressed as follows by the Elkouris: 3./

> "Geographic Differentials - Although the individual worker does not always understand why higher wages should

> be paid to another worker doing the same work but in a different area, there is believed to be sound reason for geographic differentials, as simply stated by one arbitration board: '***[E]veryone knows our country cousins, workmen, professional men, all, on the average, earn less than urbanites; and need less. They get on the whole more comforts, services, and commodities for their dollars.'"

The Statute speaks of comparisons being made between "comparable communities", and certainly the locations, the relative sizes, and the nature of the various communities bear strongly upon whether or not they are comparable within the meaning of the language selected by the Legislature.

The parties to interest arbitrations, will normally select and emphasize in their evidence and argument, the comparisons that each feels is most supportive of its final offer. When this happens, it is normally necessary for the interest arbitrator to select the comparisons which represent the "comparable communities" within the meaning of the Statute, and to use these comparison data in framing the appropriate decision and award.

In the case at hand, the Impartial Arbitrator would normally have considered the relative sizes of the cities, the geography, and the urban/rural nature of the municipalities offered for comparison.

(1) Brookfield, Menomonee Falls and Waukesha are more closely identified with the Milwaukee Metropolitan Area, and are much larger in terms of population than Oconomowoc;

(2) Horicon, Delavan, Mayville and Lake Mills have considerably smaller populations, and Waupun and Delavan, in particular, are relatively distant from Oconomowoc.

The comparison evidence in the case at hand, however, is quite clear, and does not really require extensive analysis along the above lines.

In looking to all the comparison data introduced into the record by both parties, it is quite apparent that the Employer's final offer is more closely attuned to both the 1980 increases and to the 1980 working rates paid in comparable communities. In Union Exhibit #6 and in City Exhibits #8 and #12, for example, comprehensive information is presented in connection with the 1980 wage rates for Laborers and Waste Water Operators; in pertinent part, this information consisted of the following:

Community	'80 Laborer Rates	W.W.O. Rates
Fort Atkinson	$6.17	$6.33
Jefferson	6.43	6.80
Hartford	6.90	7.74
Menomonee Falls	7.50	8.21
Whitewater	7.53	7.78
Waukesha	7.03	7.49
Watertown	6.20	6.19
Germantown	7.55	7.75
Horicon	5.35	6.73
Delavan	5.59	6.07
Beaver Dam	5.85	6.77
Mayville	5.34	6.37
West Bend	7.00	8.56
Waupun	6.20	7.80
Lake Mills	5.81	5.85

In analyzing the above figures, a number of interesting conclusions are apparent:

(1) The average 1980 rate for the Laborer classification within the six municipalities that both parties agreed were comparable is $6.71. With the Union suggested addition of Menomonee Falls and Germantown, the average increases to $6.91. When the seven communities suggested by the City are added to the six mutually agreed upon comparables, the 1980 average rate for Laborers is $6.26.

Without regard to which figures are used for comparison purposes, therefore, it is quite apparent that the $7.21 per hour rate proposed by the Employer is well above the averages paid in other communities; and the Union's suggested rate of $7.28 would be still higher than that paid by comparable communities.

(2) The average 1980 rate for the Waste Water Operator classification within the six mutually accepted communities is $6.97 per hour. With Menomonee Falls and Germantown added, the average wage figure increases to $7.22 per hour, and when the seven Employer suggested municipalities are added to the original six, the 1980 average is $6.92 per hour.

Without regard to which figures are used for averaging purposes, it is apparent that the $7.21 per hour figure proposed by the Employer is closer to the average paid in other communities than the final offer of the Union.

(3) In considering the average 1980 wage increases for the Laborer and for the Waste Water Operator classifications as shown on Union Exhibit #6, it is apparent that only Germantown and Whitewater have, or will have 1980 wage increases in excess of the .60 cents per hour increase offered by the Employer; the average wage increase for all employers is between fifty and sixty cents per hour.

(4) While 1980 wage data for all the above referenced employers was not submitted for the Truck Driver and the Mechanic classifications, the information contained in Employer Exhibits #14 and #15 strongly supports the inference that the Employer's final 1980 wage increase offer for these classifications was quite competitive.

In analyzing the above figures, the Arbitrator consolidated the wage data submitted by the parties, and has used the highest wages reported in each instance. In light of the fact that Brookfield wages were not reported for 1980, they are not included; in any event, however, even though this community pays the highest wages for various classifications, its wage data could not have significantly impacted upon the various averages shown, and could not have changed the referenced conclusions.

Based upon all the above information, therefore, and regardless of which municipalities are used for comparison purposes, the Impartial Arbitrator has reached the preliminary conclusion that the application of the statutory comparison criterion strongly favors selection of the final offer of the Employer with respect to its proposed 1980 wage increase.

In addition to the inter-city comparisons referenced above, the City was quite correct in citing the greater comparability of its 9% final wage increase offer, with intra-city agreements previously reached with police and utility employees, who received 9.25% and 8.3% wage increases for 1980.

The second major statutory criterion addressed by the parties in connection with the wage impasse was the cost-of-living factor. In fact, this criterion was urged by the Union to be considered the most important factor in resolving the wage increase impasse.

It is quite true that major and continuing rises in the Consumer Price Index are significant factors in labor contract negotiations, and in interest arbitration proceedings. It is necessary, however, to place into proper perspective this movement in the index.

The Union urged the Arbitrator to consider the movement in the CPI between January 1, 1976 and January 1, 1979, and to consider these data in comparison with negotiated wage increases during the same time frame; it urged the conclusion that a strong equitable case is made for the necessity of a significant catch-up in wages for those in the bargaining unit. In Union Exhibits #7, #8 and #9, it directly compared percentage increases in the CPI with percentage adjustments in wages during the period between 1976 and 1980.

The Employer urged the conclusion that increases in consumer prices, as measured in the CPI, somewhat overstate actual rises in cost-of-living. While not denying the significance of the cost-of-living criterion, it emphasized other arbitral criteria.

The application of the cost-of-living criteria in this dispute requires two preliminary determinations to be made by the Impartial Arbitrator:

(1) What is the base period for consideration and application of the cost-of-living criterion?

(2) How should percentage increases in the CPI be compared with percentage increases in wages?

Despite arguments relating to movement in the Consumer Price Index over an extended period of time, in accordance with well established interest arbitration principles, the appropriate base period for cost of living consideration must begin with the January 1, 1979 effective date of the parties' last labor agreement. The application of, and the rationale behind the use of this base period is described in the following excerpt from Bernstein's book: 4./

> "Base period manipulation...presents grave hazards. Arbitrators have guarded themselves against these risks by working out a quite generally accepted rule; the base for computing cost-of-living adjustments shall be the effective date of the last contract (that is, the expiration date of the second last agreement). The justification here is.... the presumption that the most recent negotiations disposed of all the factors of wage determination. To go behind such a date,...would require a re-litigation of every preceding arbitration between the parties and a re-examination of every preceding bargain concluded between them..."

The wage increase last negotiated by the parties was 8.0%, and was implemented January 1, 1979. During the calendar year 1979, the BLS Consumer Price Index (1967 = 100), increased a total of 13.4% to a reading of 230.0 for December, 1979. (This figure is erroneously reported to be 223.0 on City Exhibit #18.) Subsequent cost-of-living changes during 1980 have further increased the CPI to a reading considerably above the 1979 year end figures and, as referenced by the Union, CPI increases for the City of Milwaukee have been somewhat larger than increases in the all cities figures.

The Employer is quite correct in its assertion that the BLS data somewhat overstates the actual rise in cost-of-living. Increases

in medical costs, for example, have contributed significantly to recent increases in the CPI but, to the extent that such expenses are covered by employer paid insurance, they are not fully felt by consumers. Major recent increases in housing costs are not fully felt by those who are not in the housing market. The fixed basket of goods and services reported by the BLS also does not take into consideration any inflation motivated changes in consumer buying patterns which change the actual market basket of goods and services that are consumed.

If the 1979 CPI figures could be accurately corrected to show actual increases in cost-of-living, the Impartial Arbitrator is convinced that they would indicate a somewhat lower than reported rate of inflation for employees in the bargaining unit. It is also my conclusion, however, that the "corrected" figures would still indicate a rate of inflation closer to the 10% wage increase demanded by the Union than to the 9% increase offered by the Employer.

What then of the significant and continuing increases in the CPI during 1980? In light of the fact that the parties are dealing with a labor agreement covering only a single year, they will very shortly be returning to the bargaining table for contract renewal negotiations for calendar year 1981. These negotiations are the appropriate forum for addressing the persistent and continuing inflation which has taken place during 1980.

The Employer also cited the overall level of benefits already available to bargaining unit employees, in support of the alleged greater appropriateness of its final wage offer. In support of this argument, it introduced City Exhibits #16 and #17, which showed comparisons in the areas of numbers of holidays, sick leave allowance, longevity pay and vacation allowances.

The Union suggested that the above information was not persuasive and that it should have little significance in these proceedings.

While the information submitted by the Employer does indicate a competitive level of benefits in the referenced areas, the Impartial Arbitrator does not find that the application of the overall level of benefits criterion is of major significance in the resolution of the dispute in question. Certainly it has far less significance under the circumstances than do the comparison and the cost-of-living criteria.

The Vacation Scheduling Impasse

In asking for a reversion to the parties' prior practice of allowing a certain number of vacation days to be scheduled in one-half day increments, the Union relied primarily upon the fact that this was still the practice among the City's utility employees. This intra city comparison, it asserted, strongly favored the position of the Union.

The Employer cited potential work scheduling problems associated with the scheduling of vacations in less than one day increments, and also cited the lack of any basis for such a practice in the practices of comparable municipalities. It also cited the negotiations history criterion, emphasizing that the one-half day vacation scheduling practice was negotiated out of the contract by the parties during the negotiations leading to the 1976-1977 agreement; it would be inappropriate, argued the City, for an arbitrator to reestablish a practice that had already been eliminated by the specific agreement of the parties.

While the comparison factors argued by both parties have been taken into consideration by the Arbitrator, the significance of the negotiations history with respect to this impasse item must be emphasized. Interest arbitrators are always reluctant to overturn

an established element of past agreement between the parties unless the statutory criteria are quite clearly met. This reluctance of neutrals to overturn provisions or benefits contained in prior agreements is emphasized in the following reference from the Elkouris: 5./

> "The past practice of the parties has sometimes, although infrequently, been considered to be a standard for 'interests' arbitration...
>
> Arbitrators may require 'positive reason' for the elimination of a clause which has been in past written agreements. Moreover, they sometimes order the formalization of past practices by ordering that they be incorporated into the written agreement."

In looking to the situation at hand, there is simply no positive reason or persuasive evidence which would support the Arbitrator overturning the current practice of requiring vacations to be taken in at least one day increments. This is particularly indicated by the fact that the parties only recently negotiated the prior, one-half day scheduling practice out of the collective agreement. Further modification of the present vacation scheduling practice should more appropriately be addressed by the parties in future negotiations.

In accordance with the above, the Impartial Arbitrator has found that there is no persuasive basis for the modification of the current vacation scheduling practice. The inter-city comparisons strongly favor the position of the Employer and, while some support is provided for the position of the Union by the intra-city practice in the Utility bargaining unit, the negotiations history criterion strongly militates against arbitral modification of the current practice.

The Shift Differential Dispute

In support of its request for an increase in shift differentials, the Union cited cost-of-living considerations, and the fact that two of eight "comparable" communities already have such improvements.

The Employer countered by citing the fact that many of the comparable employers have no shift premiums at all; it additionally argued that the present shift premiums were adequate, also relying upon the overall level of benefits in support of its contention that there was no equitable basis for an increase here.

The Impartial Arbitrator can find no statutory basis for an increase in shift premiums at this time. The application of the comparison criterion does not strongly support any such increase, and cost-of-living considerations are more persuasive in connection with the general wage increase dispute treated earlier, than with this item.

The Holiday Premium Dispute

In many respects, the positions of the parties with respect to the propriety of increasing the premium for holiday hours worked to double time, mirrored their positions on the shift differential issue.

The Union argued that four of nine communities that it regards as comparable, already pay double time, while the Employer argued that ten of thirteen that it regards as comparable pay only a time and one-half premium. The Union also cited the cost-of-living criterion, while the Employer argued that current wages and benefits were generous and competitive, and urged the conclusion that there was no equitable basis for an increase in this area.

The Impartial Arbitrator can find no strong statutory basis for an increase in holiday premiums at this time. While there appears to be a trend in this direction among some referenced public sector employers, no other comparative data was offered, and the majority of the cited public sector employers still pay a time and one-half premium.

Summary of Preliminary Conclusions

Based upon all the above, the Impartial Arbitrator has reached the following summarized preliminary conclusions.

(1) In connection with the wage increase impasse:

(a) The application of the comparison criterion strongly favors the final offer of the Employer;

(b) The cost-of-living criterion as reflected in increases in the CPI since January 1, 1979, favors the final offer of the Union;

(c) The overall level of benefits criterion is not of major significance in the determination as to which of the final wage increase offers is the more appropriate.

(2) In connection with the vacation scheduling impasse, the Employer's position is strongly supported by the application of the negotiations history and the comparison criteria.

(3) In connection with the shift differential pay dispute, the comparison criterion favors the position of the Employer, and there is no strong statutory basis for the modification of present shift premium practices.

(4) In connection with the dispute relative to holiday pay premium for hours worked, the application of the comparison criterion to the municipalities cited, somewhat favors the position of the Employer. No strong statutory basis was established for the modification of current holiday pay premiums.

Selection of Final Offer

In consideration of the entire record before me, including the preliminary conclusions summarized above, it is apparent to the Impartial Arbitrator that the final offer of the Employer is the more appropriate of the two offers. This is particularly true with respect to the vacation scheduling, the shift differential and the holiday pay premium disputes.

1./ How Arbitration Works, BNA Books, Third Edition - 1973 page 746.

2./ The Arbitration of Wages, University of California Press 1954, page 54.

3./ Ibid. page 757.

4./ Ibid. page 75.

5./ Ibid. pages 788-789.

AWARD

Based upon a careful consideration of all the evidence and argument, and pursuant to the various arbitral criteria provided in Section 111.70(4)(cm)7 of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Employer is the more appropriate of the two final offers;

(2) Accordingly, the Employer's final offer, herein incorporated by reference into this award, is ordered implemented by the parties.

William W. Petrie

WILLIAM W. PETRIE
Impartial Mediator-Arbitrator

October 26, 1980
Waterford, Wisconsin