ARBITRATION OPINION AND AWARD

In the Matter of Arbitration)
)
Between)
)
VILLAGE OF MENOMONEE FALLS)
)
And) Case 35, No. 39141
) INT/ARB - 4498
TELECOMMUNICATORS ASSOCIATION,)
LOCAL UNION #510) Decision No. 25101-A
)
)

Impartial Arbitrator

William W. Petrie
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Hearing Held

April 12, 1988
Menomonee Falls, WI

Appearances

For the Village

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For the Association

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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Village of Menomonee Falls Police Department, and the Labor Association of Wisconsin, Incorporated, on behalf of its affiliate, Telecommunicator's Association, Local Number 510. The matter in dispute consists of the terms of the parties' initial collective bargaining agreement.

The parties exchanged proposals and met on various occasions in 1987, in an unsuccessful attempt to reach a complete negotiated settlement, after which the Association on July 17, 1987, filed a request with the Wisconsin Employment Relations Commission requesting interest arbitration of the matter in accordance with Section 111.70(4)(cm)(7) of the Wisconsin Statutes. After a preliminary investigation by a member of its staff, the Commission on January 20, 1988, issued certain findings of fact, conclusions of law, certification of the results of investigation, and an order requiring arbitration, and on February 8, 1988, it issued an order appointing the undersigned to hear and decide the matter as the arbitrator.

A hearing took place in Menomonee Falls, Wisconsin on April 12, 1988, at which time all parties received a full opportunity to present evidence and argument in support of their respective positions, and each party thereafter closed with the submission of post-hearing briefs, after which the record was closed on June 10, 1988.

THE FINAL OFFERS OF THE PARTIES

Following the completion of their preliminary negotiations, the parties were at impasse on nine items: fair share; wages; wage steps; overtime; vacant shifts; holidays; vacations; shift selection and duration of the agreement. The complete final offers of each party are hereby incorporated by reference into this decision and award, and are summarized as follows:

(1) In its final offer the Union proposes as follows within the various impasse areas: the adoption of a fair share agreement covering all bargaining unit employees; a wage structure with six classifications, and automatic progression from one classification to another based upon time in classification; a 3% wage increase for 1988 and an additional 3% increase for 1989; overtime at 1½ for hours worked outside of normal shift, or in excess of 8½ hours per day; a compensatory time off alternative to overtime with employee carry over options to the next year; the filling of shift vacancies by volunteers, or by

involuntarily holding over the least senior dispatcher for four hours and calling in the regularly scheduled dispatcher four hours early from the following shift; eleven and one-half holidays per year with the ability to take the holidays in advance of their being earned, subject to reimbursement of the Employer in the event that an employee leaves after having taken one or more holidays in advance of their accrual; ten days of vacation after one year, fifteen days after seven years, twenty days after fourteen years and twenty-five days after twenty years of continuous service, with scheduling of vacations on the basis of seniority in increments as short as one day; shift assignment on the basis of seniority preference; and with the two year duration of the agreement covering calendar years 1988 and 1989.

(2) In its final offer the Employer proposes as follows within the various impasse areas: a check off provision for those bargaining unit employees who authorize the deduction of union dues from their paychecks; overtime at 1½ or compensatory time off for hours worked outside of normal shift or for hours worked in excess of 8½ per day; the filling of shift vacancies with volunteers, or by involuntarily holding over the highest classified employee and ordering in the regularly scheduled employee, four hours early; eleven and one-half paid holidays per year, with a floating holiday or overtime option for those required to work; ten days of vacation after one year, fifteen days after seven years, twenty days after fourteen years and twenty-five days after twenty years, with scheduling of vacations on the basis of seniority in increments of at least four consecutive days; non-disciplinary shift assignments at the discretion of the Employer; a wage structure with trainee and probationary classifications, with three levels of the Telecommunicator Classification, with two levels of Shift Leader Classifications, and with a combination of merit and automatic progression; and with a two year duration of the agreement covering calendar years 1987 and 1988.

The Arbitral Criteria

Section 111.70(4)(cm)(7) of the Wisconsin Statutes

directs the Arbitrator to give weight to the following described arbitral criteria:

"a. The lawful authority of the municipal employer.
b. Stipulations of the parties.
c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
e. Comparison of 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 wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.
g. The average consumer prices for goods and services, commonly known as the cost-of-living.
h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

POSITION OF THE EMPLOYER

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

(1) That a comparison of the parties' final offers against the various statutory criteria, favors the selection of the final offer of the Village.

(a) Because of the predominance of language items, rather than economic items in the final offers of the parties, that the Arbitrator should look more closely to internal than to external comparables.

(b) Because the Village has articulated valid operational reasons for basing a number of its proposals on language comparable to that contained in the Police Association contract, and because of the importance of these impasse items, that the final offer of the Village should be selected.

(2) That the Village's proposal on shift selection is modeled closely after practices involving police officers. On the following bases, that it is in the best interests of the public, and more reasonable to select the final offer of the Village.

(a) That the shift selection component of the final offer of the Village embodies the status quo, and it closely tracks the shift selection procedure applicable within the Police Department.

(b) That the Association has proposed shift selection by strict seniority, which would not sufficiently address the needs of the department, employee preference, the need for a shift leader assigned to each shift and, where applicable, the policy of not requiring an employee to work the late shift in back to back years, against his or her will.

(c) That the system proposed by the Village has worked well in the past, in that it has honored the preference of eight of the nine employees in the bargaining unit in 1987, and five of the nine employees in 1988. Further, that the Employer has been able to fully train employees on a variety of shifts and under a variety of circumstances.

(d) That the present system allows the Village to avoid burnout, to avoid having inexperienced

Telecommunicators exclusively assigned to unpopular shifts, and to avoid diminution of work skills.

(e) That the position of the Village in the dispute at hand, is similar to its posture within the Police Department; that this position of the Village was upheld by Arbitrator Ziedler in a 1987 interest arbitration proceeding.

(f) That the interests of the public would be poorly served by any requirement that Telecommunicators would have to be assigned to shifts on the basis of seniority; that such a practice would require the assignment of barely trained or untrained Telecommunicators without regard to their qualifications.

(3) That considerations similar to those discussed immediately above, also favor the portion of the Village's final offer which addresses filling absences on a shift.

(a) That the Village has articulated sound reasons for its proposal that the highest classified employee be held over, while the Association's only argument was that the "low man on the totem pole" should bear the brunt of any unpleasantness.

(b) That the Association's proposal might require an employee to be held over to work a shift on which he or she has never previously worked; that such a situation could easily arise in connection with the recent employment of two new Telecommunicators, one of whom is a probationary employee, and the other of whom is a trainee.

(c) Given the importance of the tasks performed by the employees in question, the higher classified and the higher skilled employee should be called upon to work, even though the Village thereby incurs additional costs.

(d) That the Association cited only one external comparable, and offered no meaningful additional evidence in support of its proposal.

(4) That the Village's wage progression offer is more

reasonable than the Association's proposal.

(a) That traditionally the Telecommunicators have moved from Telecommunicator I through Telecommunicator IV on the basis of merit.

(b) That the Village's offer recognizes the Association's position, and by way of compromise offers movement from Trainee through Telecommunicator III by automatic progression, from Telecommunicator III to Shift Leader I on the basis of merit, and from Shift Leader I to Shift Leader II on the basis of automatic progression.

(c) That externally comparing the Telecommunicator III classification with the top rate paid in the primary comparable communities, shows the former to be more than $1.00 higher than any comparable community. That similar comparisons which take into consideration merit based progression, show the Shift Leader I and Shift Leader II classifications to range from $2.00 to $3.00 above any comparable community.

(d) That implementation of the Association's final offer would allow automatic progression to a rate higher than all secondary comparables except Whitefish Bay.

(5) That the Village's wage increase offer is more reasonable than the Association's proposal.

(a) That the Village's proposal is internally competitive with wage increases within the Police Department and the Department of Public Works, each of which received 3% increases for 1988. That the Village offer would provide 3% increases for 1988 except for those at the Telecommunicator IV level, who would received 1½% increases and move to the Shift Leader II classification.

(b) That the position of the Association relative to external comparisons is not persuasive.

(c) That the Association has proposed a wage progression system which varies greatly from the status quo, which takes no account of the existence of the Shift Leader position,

which on January 1, 1988, would raise all rates by at least 3%, and one employee's rate would increase by 25%. Further that it has not appropriately costed-out its proposal.

(d) That since the Village offer recognizes the continuing viability of the Shift Leader position, calls for comparable wage increases to those paid elsewhere in the Village, takes proper account of the relatively high wages paid in comparison to external comparables, and is reasonable and fair in light of the status quo and the Union's proposal, that it should be adopted by the Arbitrator.

(6) That the proposal of the Village relating to vacation scheduling is modeled after the Village's Police Association contract, and it should therefore be accepted by the Arbitrator.

(a) That there is no difference between the parties on the amount of vacation to be earned or the rate of accumulation.

(b) The dispute centers on the proposal that only one person from the unit be on vacation at one time, and that vacations be taken in increments of at least four consecutive days.

(c) That the Association proposes no limit on the number of employees who can be on vacation at a time, provides no discretion for the Chief of Police in the assignment of vacations or approval of requests, and provides that vacations could be taken in increments of one day. That this proposal would wreak havoc on scheduling in the bargaining unit, where only nine employees staff a seven day per week, twenty-four hours per day operation.

(d) That while more than one employee has been off on vacation at a time in the past, this experiment was not satisfactory from a safety standpoint; if continued, the absence of one or two additional bargaining unit employees for legitimate reasons, could leave the department severely understaffed.

(e) That the Association merely cited external

comparables, and offered no testimony to refute the difficulties and problems referenced by the Employer.

(f) That the Village proposal would not preclude employees from taking vacations in one day increments, but merely provides that seniority picks be in minimum blocks of four days.

(g) That the Association proposal leaves no discretion in the Chief, and could conceivably result in the entire bargaining unit being on vacation at a given time.

(h) From the standpoint of public interest and internal comparables, that the Village's final offer is more reasonable and should be accepted.

(7) That the Village proposal in the area of compensatory time should be adopted by the Arbitrator.

(a) That the differences of the parties are minor at best in this area.

(b) That the Association proposes that employees be allowed to accumulate compensatory time during the year without restriction, and to carry over up to 40 hours into the new year; that the Village offer is silent on the issue of the right to accumulate compensatory time, other than to provide that either overtime pay or compensatory time may be earned by an employee.

(c) That the Chief testified that the Department currently has a policy which allows unlimited accumulation of compensatory time during the year, and a carryover of up to 40 hours into the next year. That the Village proposal is merely designed to allow management flexibility to alter this situation in the event that there is a need in the future to do so.

(d) That the parties have already agreed to language allowing the Chief to promulgate rules and regulations administering overtime compensation, and vesting in the Chief total discretion to provide pay or compensatory time off in the most practical manner, subject to the statutory requirement that an employee may insist on pay.

(e) That both parties are proposing what is currently in effect; that agreeing to allow the Chief the discretion described above, negates any guarantees that the Association might otherwise believe it was getting from its language.

(f) That the Village proposal is almost identical to the comparable language in the Police Association contract.

(8) That the Village proposal in the area of union security is the more appropriate of the two offers.

(a) The Village proposes to check off Association dues for employees, while the Association has proposed a fair share provision.

(b) That the Village proposal is identical to the contract provision in effect for the Police Association.

(c) In this area in particular, that internal rather than external comparables should govern; that this unit of nine employees should not set a precedent for a unit of forty police officers.

(9) That the Village offer on holidays mirrors the status quo, and should be accepted by the Arbitrator.

(a) That the parties do not differ on the number of holidays, but only on the method of accumulating and assigning the holidays as off days or compensated days.

(b) While the Association offered evidence that Telecommunicators had been allowed to take holidays before they were earned in the past, this is not the system utilized in the Police Department, and not the system ostensibly applicable to the Telecommunicators when they were non-represented.

(c) That the Association rejected the holiday policy in effect for the Police Department, and the Village rejected the Association proposal to create a third system of administering holidays by adopting its final offer.

(d) That the Association's proposal could

conceivably allow a number of employees to schedule holidays off consecutively and in a block, before they are accrued, thereby seriously impacting the scheduling and operational needs of the Department.

(e) That while external comparables should not be persuasive in this area, Germantown, Waukesha, Franklin, Greenfield and Muskego have practices similar to the final offer of the Village.

(10) That the proposal of the Village for a two year agreement covering 1987 and 1988, is more appropriate than the Association's proposed two year agreement covering 1988 and 1989.

(a) That the Association was certified, and began negotiating in 1987 at a point in time after the Village had already implemented a 4% wage adjustment for all represented and non-represented employees for 1987.

(b) After already having benefited from the 1987 increase, and late in negotiations, the Association switched its proposal to a two year agreement covering 1988 and 1989.

(c) That the unfortunate switch in position by the Association leaves open the possibility that the Village could be faced with a potential suit for statutory overtime liability, on the basis of the Village's workday of 8½ hours in effect during 1987.

(d) That the parties have agreed to a method of compensation in the tentative agreement, which would eliminate the potential for wage-hour liability during any period when the contract is in effect.

(e) When the Association switched to a two year offer for 1988 and 1989, the Village found itself in the unenviable position of having made a wage adjustment for 1987, and having negotiated and agreed to a mechanism for overtime compensation, without any assurance that this would eliminate the potential for an overtime suit.

(f) That this is the parties' first agreement,

and a short agreement will allow the parties to return to the bargaining table to negotiate on problem areas, sooner than would be the case under the Association's proposal.

(g) That the Association was unable to cite any external comparables to support its 1989 wage increase proposal; further, that its attempt to draw support by citing internal comparables ignores the impact of automatic progression increases on almost one-half of the bargaining unit.

(h) Where, as here, the comparables cited by the Association do not provide meaningful data with respect to the longer agreement, it is preferable to accept a shorter duration and to allow the parties to bargain on the basis of more meaningful data in the future.

(i) That the Association should not have its cake and eat it too, by enjoying the increases implemented by the Village for 1987, resting its alleged 3% increases on the higher 1987 rate, and in the process of so doing, keeping alive the possibility of an overtime lawsuit for 1987, when the overtime compensation agreement reached by the parties would not have been in effect.

In summary, that on the issues of primary importance, shift selection and wage classifications and progressions, the Village's offer is far more reasonable. On the subsidiary issues that the Village's offer comports more closely with internal comparables, which should be more persuasive in these areas. On the issue of duration, that the Village's offer is more equitable, ensures repose insofar as potential litigation is concerned, and will allow more meaningful bargaining in the parties first renewal negotiations.

POSITION OF THE UNION

In support of its contention that the final offer of the Association, rather than that of the Employer, is the more appropriate of the two final offers before the Arbitrator, the Union emphasized the following principal arguments.

(1) That the adoption of the final offer of the Association is within the lawful authority of the Employer.

(2) That the stipulations of the parties are not in issue in these proceedings.

(3) That consideration of the interests and welfare of the public criterion favors the selection of the Association's final offer.

(a) That the Association's final offer better recognizes the need to maintain employee morale and to retain the best and the most highly qualified Telecommunicators.

(b) That consideration of the tangibles in dispute such as a good salary, health insurance, other fringes and steady work favor adoption of the Association's offer.

(c) That consideration of intangibles such as morale, feelings of accomplishment, unit pride, quality of performance and a desire to improve working conditions, also favors the position of the Association in this proceeding.

(d) That seniority rights are significantly in issue in these proceedings, including graduation from one wage level to another, filling temporary shift vacancies, and handling employee shift preference.

These seniority considerations are the focal point of these proceedings, and they significantly bear upon the morale of employees, as well as the quality and quantity of their work.

(4) That there is no dispute that the Village of Menomonee Falls has the financial ability to meet the costs of the Association's final offer.

(5) That the Association's selection of comparable communities is more reasonable than that of the Village.

(a) That the Association has based selection of comparables upon population, geographic proximity, mean income of employed persons, overall municipal budget, total complement of relevant department personnel, and the wages and fringes paid such personnel.

(b) That the Telecommunicator field is rapidly

being upgraded, and is growing in sophistication, job stress and required training.

That awareness of these considerations is more important in the selection of appropriate comparables.

(c) That after consideration of twenty-eight possible comparables within the same geographic area and sharing the same labor market, the Association has concluded that the primary comparables should be the Cities of Waukesha, Brookfield, New Berlin, Muskego and Germantown, in addition to the County of Waukesha, and the Lake Area Communication System. That South Milwaukee, Cudahy, Oak Creek, St. Francis and the Village of Thiensville were eliminated due to the fact that they use police officers to dispatch; that Mequon, Shorewood, Fox Point, Bayside and West Milwaukee were eliminated because they do not have collective agreements in effect; that the Cities of West Allis and Wauwatosa were eliminated because of their size, their populations and their relatively large industrial bases.

(6) That the Association's fair share proposal is more favored by consideration of comparables than is the checkoff proposal.

(a) That seven external comparisons have fair share provisions.

(b) Internally, that the Village's contract with Local Union #31 contains a fair share agreement.

(c) That the fair share language proposed by the Association meets all legal requirements at both the federal and the state levels.

(d) That the position of the Association is significantly favored by consideration of at least one recent Wisconsin interest arbitration decision and award.

(7) That the Association's wage proposal is reasonable and is supported by consideration of both external and internal comparables.

(a) That the wage proposal of the Association is identical to that voluntarily entered into between the Village and its other two labor unions; that Local Union #31 and the Police Association both have two year agreements covering fiscal years 1988 and 1989; that both settlements provide for 3% wage increases in each year of the agreements.

(b) That the Association's final offer is reasonable when considered in light of the three settlements within the external comparison group; of the three settlements for 1988, that one had a 6.2% increase, the second a 4.0%, and the third a 6.0% increase.

(c) That the Employer's final wage offer is confusing, in the following respects: it does not indicate what level of pay adjustment would be accorded the four persons currently classified as Telecommunicator IV; it contains two new steps not discussed at the bargaining table; it proposed no guaranteed steps at the bargaining table but its offer guarantees some steps and leaves other to merit progression; it would institute two new job titles without indicating which employees would fall within the new categories; that the Employer's testimony at the hearing indicated that a 1.5% increase would result from the reslotting of two persons into the Shift Leader II classification.

In summary, that the Association's final wage offer is more reasonable, and is more consistent with both internal and external comparables.

(8) That the Village's position on merit pay progression is not supported by consideration of comparables, and that the use of automatic progression is supported by consideration of both internal and external comparisons.

(9) That the position of the Association with respect to compensatory time off merely identifies and reflects the status quo.

(10) That the position of the Association relative to filling temporary vacant shifts is consistent with the status quo.

That the parties differ in this area only with

respect to how vacancies should be filled where no volunteers are available and it is necessary to assign an employee to work. That this situation has never arisen in the past, is unlikely to arise in the future, and that it is logical to assign the least senior qualified employee in the event it becomes necessary to require an employee to work.

(11) That the Association's proposal on holidays reflects the de facto status quo in existence for many years prior to the Association being formed and achieving bargaining rights.

(12) That the Association's final offer in the area of vacations is less restrictive and more reasonable than the offer of the Village. That the only remaining vacation issues are whether they can be taken in one day increments, and whether more than one Telecommunicator can be off on vacation at one time; that the parties' prior status quo was that more than one employee could be off on vacation at the same time, provided they were not on the same shift, and that vacations could be taken in one day increments.

(13) That the Association's final offer on shift selection is consistent with, and supported by consideration of comparables, both internal and external. That the Association is agreeable to the proposition that an employee attempting to exercise shift selection preference must be qualified to perform the duties of the job to which they aspire.

(14) That the Association's position on the duration of the agreement is more practical than the offer of the Employer, particularly in light of the relationship between the parties. That any potential questions arising under the Fair Labor Standards Act should not impact upon the duration of this, the parties' first collective agreement.

(15) That arbitral consideration of the status quo ante favors the selection of the final offer of the Association on an overall basis. That courts, administrative agencies and arbitrators have historically looked with suspicious eyes at employer attempts to change a status quo in such a manner as to diminish employee rights or benefits.

On an overall basis that the statutory criteria and considerations of reasonableness, clearly and persuasively favor the selection of the Association's final offer.

FINDINGS AND CONCLUSIONS

These proceedings are unusual in that there is a relatively large number of impasse items in issue, including both economic and non-economic matters, and in that they involve the parties' first collective agreement. In presenting their respective cases, each of the parties emphasized the comparison criterion, and each addressed the significance of the prior status quo in various of their impasse areas, and each touched upon the perceived reasonableness of their positions in certain of the impasse areas. Indeed, many of the arguments relating to the reasonableness and/or the practicality of certain of the language alternatives, more closely resembled a rights arbitration, than an interest proceeding.

For the purpose of clarity, the Arbitrator will preliminarily address the comparison criterion and the significance of the prior status quo, after which each of the various impasse areas will be separately addressed.

The Comparison Criterion

Although the legislature did not prioritize the various arbitral criteria referenced in Section 111.70 of the Wisconsin Statutes, there can be no serious doubt that the comparison criterion is normally the most important and the most persuasive of the listed criteria. In addressing the merits of final offers which involve wages or salaries and/or the levels of fringe benefits, the so called external intraindustry comparisons are generally regarded as the most persuasive comparisons; in the case at hand, of course, these external comparisons consist of comparison between similar police dispatchers or telecommunicators working for comparable public employers. As argued by the Village, however, when arbitrators move to a consideration of certain policy or language components of parties' final offers, a much more persuasive case can be made for the relative importance of internal comparisons; in this case, of course, such internal comparisons would be with the similar policies or language items governing other Village employees.

At the hearing and in its post hearing brief, the Association urged that the primary external comparables should consist of dispatchers or telecommunicators covered by collective agreements with the cities or villages of Waukesha, Brookfield, New Berlin, Muskego and Germantown, with the County of Waukesha, and with the Lake Area Communication System. The Village proposed that the primary comparables consist of the cities or villages of Brookfield, Brown Deer, Germantown, New Berlin, and Waukesha, and that a group of secondary comparables consist of Franklin, Greenfield, Muskego and Whitefish Bay. In addition to proposing the use of slightly different primary and secondary comparables, the Village also urged that greater weight be placed upon internal comparisons with the Police Association bargaining unit within the Village, than upon other comparisons.

The Significance of the Status Quo Ante

Although the arbitral criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, contain no specific reference to such factors as the parties' bargaining history, their past practices, or their prior status quo, these considerations fall well within the coverage of sub-section (j), which directs arbitral consideration to other factors normally taken into consideration in public and private sector negotiations, mediation, fact-finding or interest arbitration.

When an interest arbitrator is faced with demands from either party, to significantly alter or modify the status quo, or to add new or innovative language, practices or benefits, he will tread very carefully, and will normally require the proponent of change to make a very persuasive case! This is true whether the practice or practices in question have resulted from the past negotiations of the parties, or from the unilateral action of an employer which preceded the obligation to bargain collectively. Both of the parties to the dispute at hand recognized and argued the significance of the status quo ante, but there was some dispute as to exactly which of the final offers reflected the status quo within certain of the individual impasse areas.

In addressing the matter of what constitutes the status quo, arbitrators will normally look to the traditional considerations involved in addressing matters of past practice in rights disputes involving the interpretation and application of ambiguous contract language, or those involving attempts to enforce an alleged practice. Stated simply, a past practice or a status quo is either a known and repetitious course of conduct, or one which has been regularly engaged in over a long enough period of time to justify charging the parties with constructive knowledge of the practice.

The Permanent Shift Assignment Issue

In this area, the Union is proposing shift selection by seniority on a yearly bid basis, conditional upon employee qualifications, while the Village is proposing to continue its past practice of making shift assignments on a yearly basis, based upon the needs of the department, employee preference, the need for a shift leader assigned to each shift and, where practical, the policy of not requiring employees to work the late shift in back-to-back years.

The Employer submits that its proposal is consistent with the prior status quo, that it closely parallels the current procedure within the police bargaining unit, that it has generally reflected employee preference in most cases, and that the position of the Village was upheld in prior arbitration proceedings in the police bargaining unit, by Arbitrator Frank Zeidler.

The Association submits that employees should be able to exercise their seniority in the area of shift assignments. It urges that such a practice is widely available in bargaining units throughout the land, and that its request is supported by both external and internal comparables; in the latter respect it referenced the fact that Village employees represented by Local #31 have shift assignment by seniority, conditional upon qualifications, and that the Police Association agreement provides for day shift assignments by seniority, with the remaining shifts assigned by the Chief. The Association distinguishes the Ziedler arbitration from the situation at hand by emphasizing that the Police Union was seeking all shift assignment by strict seniority, rather than giving recognition to employee qualifications.

In examining the record and the arguments of the parties, the Arbitrator is struck by the fact that the Employer is proposing that no consideration of seniority be required in undertaking shift asignments, which is a highly unusual procedure in collective agreements. Internally, the Local #31 contract with the Village provides for shift assignment on a basis similar to that proposed by the Association, and even in the Police bargaining unit, there is provision for day shift assignments on a seniority basis. While the desire of the Employer for some degree of uniformity between the telecommunication and the police bargaining units is understandable, it is impossible to ignore the fact that the external comparables strongly favor the position of the Union in this impasse area. In looking to the external comparables advanced by both parties, the Arbitrator notes that while the Village of Franklin is identifed as having no provision, all other comparables have some seniority consideration required in the shift assignment process! The Association is clearly quite correct in its assertion that seniority is at least a component in the shift assignment process, in the vast majority of labor agreements.

Some of the comparables provide for non-seniority based limitations upon the assignment of employees to shifts, but the Arbitrator is limited in these proceedings to the selection of the final offer of one of the parties, and the shift selection proposal of the Association is clearly favored by consideration of the record. Stated simply, it has made a persuasive case for some seniority consideration in the shift assignment process.

The Temporary Shift Vacancy Issue

This impasse item involves the filling of temporary shift vacancies, and such vacancies are normally filled by holding over one employee for four hours and by scheduling a later shift employee to come in four hours early, each assignment being on a voluntary basis. If the vacancy cannot be filled in this manner, other off duty dispatchers are solicited in search of volunteers. If the temporary vacancy cannot be filled through the use of volunteers, the Association proposes that the least senior dispatcher on duty be required to extend his shift for four hours, and the regularly scheduled dispatcher

be required to report for work four hours early. The Village proposes, in the absence of volunteers, that the highest classified employee be held over for one half of the shift, and the regularly scheduled employee be required to come in four hours early.

The Association basically urges that the filling of the temporary shift vacancies on an involuntary basis, would be an appropriate area for the recognition and application of seniority. The Village, on the other hand, urges that the low man on the seniority totem pole approach could require the assignment of telecommunicators to shifts on which they had never worked, including probationary employees and trainees. It urged that the Village was willing to pay the higher costs of using the higher classified employees, to ensure the qualifications of the employee filling the temporary vacancy.

After examining the record, the Impartial Arbitrator has concluded that this impasse item is more theoretical than real, in at least two respects. First, there is no evidence that the temporary shift vacancies have ever had to be filled on other than a voluntary basis, and the testimony in the record indicated little likelihood that this would change in the future. Second, the Employer has reserved the broad right to assign work under the management rights provision contained in the tentative agreement, and even the Union's post hearing brief admits that the Chief of Police would not be required to assign an unqualified employee to fill a temporary shift vacancy.

While each party can make certain persuasive arguments in support of their respective positions, the Impartial Arbitrator has preliminarily concluded that the record does not definitively favor the position of either party on this impasse item.

The Union Security Issue

In this area the Union's final offer contains a fair share proposal, while that of the Village contains a checkoff provision. Each side emphasized comparisons in support of their proposal and each urged arbitral consideration of the equities of the situation.

The Employer submitted that nine telecommunicators should not be able to determine the union security standards for the much larger police bargaining unit, which has only a checkoff provision. It submitted that internal comparison with the police bargaining unit, and the equities of the situation, should dictate arbitral preference for its union security offer. The Association submitted that external comparisons with Waukesha County, the City of Waukesha, Brookfield, New Berlin, the Lake Area Communication System, Muskego, and Germantown supported its request for a fair share provision in the agreement; it also cited internal comparisons, in pointing out that the Village's labor agreement with Local #31 also contains a fair share provision On the equities, it pointed out that all nine bargaining unit employees were already members of the Association.

In examining the union security issue, the Impartial Arbitrator has preliminarily concluded that the final offer of the Association is the more persuasive. The fair share approach to union security has been adopted within all of the principal external comparables, and in one of the two bargaining units within the Village of Menomonee Falls. While the Village might well be met with a fair share demand in future police negotiations, this factor is simply insufficient to justify rejecting the Association's fair share demand in these negotiations.

The Vacation Scheduling Issue

The positions of the parties are identical with respect to the amount of vacation earned by employees with the prerequisite amounts of qualifying service, and they differ only with respect to the scheduling of vacations. These scheduling differences reflect disagreement on the number of employees who can be off on vacation at any one time, and the minimum number of consecutive days which can be used by employees for vacation purposes. In these areas, the Employer has proposed that a maximum of one employee may be off on vacation at one time, and has also proposed that vacations must be taken in minimum increments of at least four consecutive days. The Association proposes that vacations can be scheduled in minimum increments of one day, but it offers no formal language with respect to the number of employees who could be on vacation at a single time.

The Employer justified its vacation proposal on the basis of administrative considerations emphasizing that only nine employees staff a seven day per week, twenty-four hour per day operation. It cited the four day minimum vacation increments provided for in the Police Association contract, urged that adoption of the Union's proposal would rob the Chief of any discretion, and argued that it could theoretically result in all employees being on vacation at a single time.

The Union urged arbitral consideration of the status quo, cited the lack of any administrative problems with the scheduling of vacations in the past, and suggested that anti union animus furnished at least part of the underlying basis for the Village's proposal to restrict the vacation rights of unit employees.

In addressing the positions of the parties, the Arbitrator must note that the Association's final offer does not propose that one employee per shift be allowed to schedule vacations at one time; it has formally proposed, however, the continuation of the undisputed past practice of allowing vacations to be scheduled and taken in one day increments. As discussed earlier, the proponent of change from the status quo has the burden of making a persuasive case for the change, and the Employer has simply failed to do so! There is no evidence that any significant difficulties have arisen in the past from the practice of allowing vacations in one day increments, and the Employer's theoretical arguments suggesting the possibility of all employees

being off on vacation at the same time are simply not persuasive. The Employer has specifically reserved broad management rights in the new agreement, in addition to which the parties to any agreement implicitly agree to exercise their rights in a reasonable manner. The Employer has sufficiently broad authority to refuse to allow an unreasonable number of employees to take vacation at the same time, and any attempt to act in such a manner on the part of those in the bargaining unit, would clearly constitute unreasonable action.

On the basis of the Employer having failed to make a persuasive case for a change in the status quo ante, the Impartial Arbitrator has preliminarily concluded that the Association's final offer in the area of vacation scheduling is more appropriate than that of the Employer.

The Holiday Issue

This issue bears a significant resemblance to the vacation scheduling issue addressed above, with the sole dispute between the parties consisting of whether those in the bargaining unit could take their holidays at any time during the course of the calendar year, as has been the case for many years in the past. Without unduly belaboring the point, it will be repeated that the proponent of change has the burden of making a persuasive case for the change, and this the Employer has failed to do!

While there was testimony at the hearing that the Chief did not know of the prior holiday practice of many years, the Employer must be charged with at least constructive knowledge of such a long and apparently well established practice which constitutes the status quo. There is simply nothing in the record which suggests any significant difficulty in the continued administrative application of the status quo, and the argument that the telecommunicators should be required to adhere to the practices in existence in the police bargaining unit is simply not persuasive in this context.

The Contract Term Issue

While each party is proposing a two year contract duration, the Association is urging an agreement covering 1988 and 1989, while the Village is proposing an agreement covering 1987 and 1988.

The Association urges consideration of the fact that arbitral adoption of the position of the Village would immediately place the parties into the negotiation of a successor agreement, while the adoption of its final offer would give the parties at least one year of labor peace. It urges that adoption of its offer is also indicated by arbitral consideration of the parties recent negotiations history.

The Employer urged consideration of its potential vulnerability to a Fair Labor Standards Act based action for uncompensated overtime for calendar year 1987, if the agreement was not determined to cover this time frame; it additionally urged consideration of certain equities, argued that a short initial agreement would allow the parties to more expeditiously approach problem areas in the renewal agreement, and emphasized that external wage comparisons were not available for calendar year 1989.

The Arbitrator has carefully examined the positions of the parties with respect to the contract term, and has preliminarily concluded that a persuasive case can be made for the position of either party. The position of the Association is slightly favored, however, by consideration of the fact that the Village's other two agreements cover calendar years 1988 and 1989, and by virtue of the long delay in completing this, the initial agreement. Although wages and economics can be retroactively applied to prior years, it is impossible to fully implement many of the language terms on a retroactive basis. The parties are in agreement on a two year duration for the contract, and it makes much better sense to have at least one year of prospective application of a collective agreement, than to have the contract completed only a few months prior to its expiration.

The Wage Structure and Wage Progression Issues

Both parties departed somewhat from the status quo in their wage structure and in their wage progression offers. The 1987 structure contained Telecommunicator Trainee and Probationary classifications, and four levels within the Telecommunicator Occupation, Telecommunicator I, II, III IV. Movement within the four basic Telecommunicator classifications has been on the basis of merit.

The Employer has proposed seven classifications in the wage structure for the new labor agreement including Telecommunicator Trainee and Probationary classifications, three levels within the Telecommunicator Occupation, and the addition of Shift Leader I and II classifications. It urges the use of a six month automatic progression from probation to Telecommunicator I, one year automatic progression from Telecommunicator I to II, and eighteen months automatic progression from Telecommunicator II to III; it urges merit selection for movement from Telecommunicator III to Shift Leader I, with automatic progression to Shift Leader II, after eighteen months.

The Association proposes a six level wage structure, beginning with six months in a trainee capacity, after which

an employee would move to the bottom of the rate range for the Dispatcher Classification, with automatic progression thereafter at one year intervals, and would reach the top of the rate range after four years of service.

Initially it must be noted that both offers contain more steps in the wage progression from the bottom to the top of the Telecommunicator Occupation, than do the principal external comparables; additionally, it must be noted that the external comparables, with the single exception of Waukesha County, have adopted full automatic progression, encompassing one to four year periods. The Village's final offer of part automatic progression and part merit progression is a departure from the pre-negotiations practice, and the number of classifications, and the partial use of merit progression is simply not consistent with the external comparables.

Certain persuasive arguments can be advanced in support of the Village's final offer, and it is unfortunate that it was not advanced during the give and take of negotiations between the parties, rather than being first advanced in its certified final offer. Additionally, it should be recognized that the use of the two new classifications proposed by the Employer, would create questions relative to the status of certain incumbent employees, and would also result in lower than normal increases for certain employees.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the final offer of the Association on the wage structure and the wage progression issues, is the more appropriate of the two final offers. This conclusion is primarily based upon consideration of the principal external comparisons.

The Deferred Wage Increase Issue

The major remaining issue in these proceedings is related to the earlier question of whether the contract should cover 1988 and 1989, or 1987 and 1988. As the only one of the two parties with a deferred wage increase proposal covering 1989, a significant part of the wage increase question is whether the Association has made a persuasive case for its proposed 3% increase in wage rates for the various classifications in 1989.

The Village cites internal 1988 comparisons with the other two bargaining units in support of the proposition that a 3% wage increase for 1988 is appropriate; it submits that all those in the unit would receive similar 3% increases in 1988, with the exception of those unit employees at the

Telecommunicator IV level, who would receive 1½% increases and move to the Shift Leader II classification. It urges that the Union's wage increase offer, when combined with the automatic progression component of its final offer, would generate excessive increases for certain employees. It also cited and urged consideration of the relatively high wages paid to the bargaining unit Telecommunicators, in relation to those paid to the external comparables.

The Association urges primary consideration of internal comparables, citing the fact that its general wage increase proposal for 1988 and 1989 is identical with those agreed to by the Village and its other two labor unions; it also cited a limited number of external settlements, emphasizing 1988 increases of 6.2% in Brookfield, 4.0% in Germantown and 6.0% for Lake Area Communication Dispatchers. Thereafter, it indicated confusion with respect to how the Village's final offer would be implemented in 1988, particularly citing the matter of the placement of Telecommunicators IV into the Shift Leader classifications, and it criticized the practice of introducing major wage increase, classification and wage progression changes in a final offer, which changes had not previously been negotiated upon by the parties.

Although the Employer is quite right that progression through the rate ranges will result in significantly larger increases to certain employees than to others, this is characteristic of any situation where the parties adopt rate ranges as opposed to flat rate jobs. When rate range progression or automatic progression from one classification to another is provided for in a labor agreement, it must be presumed that the progression is provided in recognition of the greater value of an employee's service as he or she becomes more experienced and more proficient in their assigned duties. Although the costs of such progression may properly be factored into the final offer selection process in arbitration, such individual progression is normally regarded as a cost in addition to any structural wage or salary increases, rather than a part of such increases. Stated another way, there will normally be merit increases, automatic progression and promotion to higher paying classifications in almost any unit of employees, and these costs are normally considered to be an addition to, rather than a part of any overall adjustment to the wage or salary structure.

Finally the Arbitrator will observe that if the Employer has unilaterally adopted a position of wage leadership versus certain otherwise comparable employers, this does not alone justify arbitral selection of a lower general wage increase for 1988 or 1989, than would otherwise be justified

by consideration of the increases granted to external and internal comparables.

Principally on the basis of the internal comparables, and having already determined that an agreement covering 1988 and 1989 is appropriate, the Arbitrator has preliminarily concluded that the Association's wage increase proposals for both 1988 and 1989 are justified by the record. On an overall basis, the deferred wage increase component of the Association's final offer is more appropriate than this component of the Village's final offer.

The Compensatory Time Off Issue

Without undue elaboration, the Impartial Arbitrator will observe that there are no practical differences between the final offers of the parties within the compensatory time off area, and the record does not definitively favor the position of either party on this item.

Summary of Preliminary Conclusions

As addressed in more significant detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions.

(1) The intraindustry comparison criterion is normally regarded as the most important and the most persuasive of the various arbitral criteria. In the case at hand, these comparisons are with similar police dispatchers or telecommunicators, working for comparable public employers.

When arbitrators move to consideration of certain policy or language components of parties final offers, a more persuasive case can be made for the relative importance of internal comparisons.

(2) Consideration of the status quo in arbitration, falls well within the general coverage of Section 111.70(4)(cm)(7)(j) of the Wisconsin Statutes. When an interest arbitrator is faced with demands from either party to significantly alter or modify the status quo, or to add new or innovative language, practices or benefits, he will normally require the proponent of change to make a very persuasive case.

(3) Based principally upon external and internal comparables, the Association has made a persuasive

(4) The record does not definitively favor the position of either party on the temporary shift vacancy issue.

(5) The Association's final offer on the Union security issue, is preferable to that of the Employer. This conclusion is principally based upon arbitral consideration of external and internal comparisons.

(6) The Association's final offer on the holiday, and the vacation scheduling issues, is preferable to that of the Employer. This conclusion is principally based upon the failure of the Employer to establish a persuasive case for a change in the status quo.

(7) The Association's final offer on the contract term issue is slightly favored over the final offer of the Employer. This conclusion is principally based upon the long delay in concluding the contract negotiations process, and upon internal comparisons.

(8) The Association's final offer on the wage structure and wage progression issues, is preferable to that of the Employer. This conclusion is principally based upon consideration of external comparisons.

(9) The Association's final offer on the deferred wage increase issue, is preferable to that of the Employer. This conclusion is principally based upon internal comparisons, the prior conclusion relative to the term of the agreement, and referenced other considerations.

(10) The record does not definitively favor the position of either party in the area of compensatory time off.

Selection of Final Offer

Based upon a careful consideration of the entire record in these proceedings and all of the statutory criteria, the Impartial Arbitrator has preliminarily concluded that the final offer of the Association is the more appropriate of the two final offers. This conclusion is principally based upon external and internal comparisons, and upon consideration of the prior status quo of the parties in various of the impasse areas. While the Employer has made a number of valid points with respect to certain elements of the parties' final offers, the Arbitrator is limited to the selection of the final offer of either party in toto, and the Association's final offer is clearly favored.

AWARD

Based upon a careful consideration of all of the evidence and argument, and a review of all of the various arbitral criteria provided in Section 111.70 of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Telecommunicator's Association, Local 510, is the more appropriate of the two final offers before the Arbitrator.

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

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

August 8, 1988