

STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

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* In the Matter of the Petition of	* OPINION AND AWARD *
* INTERNATIONAL UNION OF OPERATING ENGINEERS	* *
* To Initiate Arbitration Between	* Case No. 54 *
* Said Petitioner and	* No. 40626 *
* CITY OF STURGEON BAY (UTILITIES)	* INT/ARB-4921 *
* *	* Decision No. 25549-B *
* *	* Gil Vernon *
* *	* Arbitrator *
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APPEARANCES

On Behalf of the Employer: Cliff Buelow and Lon D. Moller,  
Attorneys at Law - Davis and Kuelthau

On Behalf of the Union: Ken Adams, Business Manager -  
Local 310

I. BACKGROUND

On December 18, 1987, the Parties exchanged their initial proposals on matters to be included in a new collective bargaining agreement to succeed the agreement which expired on December 31, 1987. Thereafter, the Parties met on one occasion in an effort to reach an accord on a new collective bargaining agreement. Mediation was conducted on January 19 and May 9, 1988 by a member of the Commission's staff. On May 11, 1988, the Union filed the instant petition requesting that the Commission initiate Arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal

Employment Relations Act. By June 13, 1988, the Parties submitted to the investigator their final offers, and thereupon the Investigator notified the Parties that the investigation was closed and advised the Commission that the Parties remain at impasse.

Subsequently, the Parties were ordered to select an Arbitrator. The Parties selected the undersigned and he was appointed Arbitrator July 13, 1988. A hearing was held November 16, 1988 and post hearing briefs were exchanged December 16, 1988.

## II. ISSUES AND FINAL OFFERS

There are two issues common to both final offers. They are wages for 1988 and 1989 and the Employer's contribution to health insurance premiums during the two-year agreement. The Employer raises other issues relating to part-time employees.

With respect to wages, the Union proposes a 3% across-the-board increase for 1988 and an across-the-board increase in 1989 equal to the CPI-W of October 1988 (United States City Average). The City proposes a 1.5% increase for 1988 and 2% increase in 1989.

Health insurance premiums would be paid in "full" by the City under the Union's final offer. The Employer offers to contribute \$202.56 and \$73.59 for family and single coverage respectively, in 1988. For 1989, they propose to contribute \$212.69 and \$77.27.

The last issue relates to part-time employees. First, the City proposes to pay part-time water and purification department operators \$7.50/hour. They also propose to amend Article X by adding the following as the last paragraph:

"Notwithstanding any other provision of this agreement, part-time employees who are hired to work only weekends in the Water and Purification Department shall be paid at straight time for this weekend work. These employees shall not receive any fringe benefits except those required by law."

### III. ARGUMENTS OF THE PARTIES (SUMMARY)

#### A. The Union

##### 1. Wages

The Union argues that for comparison purposes the only true comparables are other utilities. They also ask the Arbitrator to keep in mind that a utility is a business, and is run and controlled by the rates charged the Consumer. They also believe that wage levels aren't important. The Union argues the only true measure that can be used to demonstrate an appropriate wage increase is the percentage increase of wages in the comparables. Thus, they present the following data for 1988, which favors their offer:

Shawano	3.85%
New London	3%(Bonus)
Plymouth	3.5%
Two Rivers	3%
Algoma	5%
Sturgeon Bay	1.5% (Commission's Final Offer) 3% (Union's Final Offer)

The Union also looks at internal settlements, particularly for non-Union employees of the Commission. They note that the non-Union, non-represented employees were given wage increases ranging from the low of 1.47% to a high of 2.81% with an equalized average of 1.85%. Further, Management raises were substantial (2.94%). They also draw attention to the rate increases for city workers in Algoma and Kewaunee for 1988 (4.75% and 3.0% respectively) as well as increases granted non-Union City employees of Sturgeon Bay.

The Union also explains their rationale for proposing to use the CPI-W for the second year of the contract. They note that in previous years when a two-year agreement was negotiated (1980-81 and 1985-86) the Parties agreed to use the CPI-W for the second year of the contract. Thus, the Union argues in light of the practice in past years, it is perfectly reasonable for the Union to offer this determination for the percent increase to be applied for the 1989 wage increase.

The Union also addresses the "gloom and doom" atmosphere the City tries to project. They counter this information with positive economic news concerning new contracts for Peterson Builders, new retail developments and industrial/economic development activities. In fact, they note the Commission committed \$114,300 to such projects in 1988.

## 2. Insurance Premiums

The Union notes at the outset that in the past the insurance premium paid by the Commission represented 100% of the premiums. The Commission's final offer will not pay for the full cost of the premium. The figures show the cost for the single plan for 1989 going for \$88.87 and the cost of a family plan going to \$273.67. That would leave the single employee picking up \$22.60 a month in insurance premiums and a family plan employee picking up a \$60.98 a month. They calculate that this represents a 2.817% cut in wages and isn't offset fully by the Commission's 2% offer in 1989. This is in contrast to Algoma and employees in the City of Sturgeon Bay who enjoy fully paid health insurance.

## 3. Part-time Employees

The Union notes that it was determined in arbitration on May 5, 1988 that the Commission had the right to hire part-time waste/water treatment plant operators. However, the Union also asserts that during the May 9 mediation sessions the City didn't attempt to bargain with respect to part-time employees. Then in its preliminary final offer the City proposed the amendment to Article X and in its final offer proposed the part-time wage rate. The Union argues that the Commission is seeking to have the Arbitrator alter the contract on issues it hasn't attempted to bargain and that this should weigh against the Employer. Moreover, the Union points out the \$7.50/hour offered, is \$1.68/hour below the lowest rate in the contract, which is \$9.18 for the starting

rate for any employee hired off the street, with no knowledge and work experience for the Utilities Commission. The Union argues it is beyond the scope of the Arbitrator's authority to impose contract changes upon the Union when the Commission has not met its obligation with respect to duty to bargain.

B. The Employer

1. Wages

The Employer initially argues that Sturgeon Bay is a unique and independent economic center which defies traditional comparability analysis. This relates primarily to the major role that shipbuilding has played historically in the local economy. In view of this fact, the Commission contends initially that there are no other municipal employers which can be determined as being comparable to Sturgeon Bay for purposes of this proceeding. In support of this they cite Arbitrator Fleischli in City of Sturgeon Bay (City Employees). Accordingly, it is their position that the Arbitrator should give greater weight and consideration to the remaining statutory factors.

In the alternative, if the Arbitrator determined that proper comparables can be identified the Commission proposes that the following public utilities be recognized and established as comparable to Sturgeon Bay: New London, Plymouth, Shawano and Two Rivers. The Commission maintains that its' suggested comparables should be selected as the proper determinant of the Parties' comparables because of

their similarity in terms of the population size of the municipal areas they serve, the nature and extent of the water and electrical services they provide, and their total number of employees. Regarding the Union's comparables, the City believes that its list of three municipal employers (Algoma, Kewaunee and Sturgeon Bay), one public utility (Algoma) and one privately owned and operated utility (WPS), does not present the Arbitrator with a coherent group of employers which is comparable to the Sturgeon Bay Utilities and should be rejected for that reason.

Utilizing their comparable group, the Employer notes that Sturgeon Bay's No. 1 ranking will be maintained under either offer at all four classifications (Lineman, Meter Reader, Water Plant Maintenance and Meter Serviceman). In fact, in 1988 even under the City's offer the hourly rates in the four classifications will exceed the average from \$.98 to \$1.81. Thus, the City argues that the Union can offer no explanation of why employees in Sturgeon Bay should substantially "widen their lead" relative to the comparables as they do under its final offer.

Looking at 1989 settlements, the Employer notes the Union's proposal, based on the CPI-W, will cost 4.2%. Although none of the Commission's comparables have settled for 1989, the Union's suggested comparable of Sturgeon Bay municipal employees have been awarded the City's final offer of 2% in 1988 and 2% in 1989 by Arbitrator Fleischli in City of Sturgeon Bay (City Employees). This settlement clearly favors the Commission's 2% wage offer for 1989. They also

note that Arbitrator Fleischli held in City of Sturgeon Bay (City Employees), that the public interest and welfare was entitled to determinative weight in his award, even though the Union's final offer of a \$.35 per hour increase in 1988 and a \$.42 per hour increase in 1989, was clearly supported by the cost of living factor. Likewise, Arbitrator Malmud selected the City's 2% final offer in City of Sturgeon Bay (Police Department), despite the record evidence of changes in the Consumer Price Index.

The Employer next contends the public interest and welfare is entitled to determinative weight in this matter and fully supports the Commission's final offer. They offer extensive case citations wherein Arbitrators have given weight to the interest and welfare of the public. Thus, they believe recent decisions in City of Sturgeon Bay (City Employees), and Arbitrator Malmud's decision in City of Sturgeon Bay (Police Department) and School District of Sevastopol, Dec. No. 29,910-A (1988) deserve great weight in this regard.

The interest and welfare of the public is shaped in this case by the extreme depression in the ship building industry. Simply, no commercial ships are being built anymore and approximately 1,750 people have lost their jobs permanently. In addition, the December 1987 unemployment rate was 15.2%. The impact of this is devastating on the local economy since approximately 30% of the total number of Bay Ship employees, who have been laid off, live within the City of Sturgeon Bay



itself. Moreover, recovery of the Sturgeon Bay economy is not imminent, due to the overdependence on the shipbuilding industry. Then, there is the matter of Peterson Shipbuilding, who, since 1986, has laid off approximately 30% of its workforce. Moreover, with the completion of its contract with the Navy for four wooden minesweepers in December, the Company expects to make layoffs of an additional 190 employees.

The Employer also believes that public sector settlements clearly favor selection of the Commission's wage proposal. In this regard, they offer the following:

CITY OF STURGEON BAY  
1988-899 SETTLEMENTS

<u>Bargaining Unit</u>	<u>1988</u>	<u>1989</u>
City Employees	2.0%	2.0%
Firefighters	2.5%	2.5%
Police	2.0%	---
Average	2.17%	2.25%
Commission Final Offer	1.50%	2.0%
+/-	-.67%	-.25%
Union Final Offer	3.0%	4.2%
+/-	+.83%	+1.95%

They note too that the City submitted final offers to the police on January 26, 1988 and to its municipal employees on February 2, 1988, nearly two months before Bay Ship announced on March 29, 1988 that it would never build ships again and that the substantial majority of the Company's layoffs would be permanent. They also note that Door County, in response to the economic situation, has offered 0 and 2% in 1988 and 1989 to most of its employees.

Private sector settlements are also addressed by the Employer. These settlements have been marked by wage freezes and wage cuts. Regarding the cost of living, the Commission maintains that its wage final offer is supported by an historical analysis of the relationship between changes in the Consumer Price Index and the prior settlements entered into by the Parties. They contrast the 1984-87 contract increases of 13.65% against the 8.85% increase in the CPI over the same period.

## 2. Part-time Employees

The Employer details the genesis of this proposal. Initially, in bargaining, they had sought a way to revise the work week of operators so they could avoid regular weekend overtime. Eventually, this evolved into the idea of part-time employees. One thing led to another and an Arbitrator ruled they had the right to hire part-time employees. Thus, the Commission's proposed amendment to Article X does not seek to change or modify any existing language in that provision, and serves only to reiterate Arbitrator Knudson's decision that the Commission is allowed to hire part-time waste water plant operators. The wage rate proposal was intended to fill an existing gap in the Parties' labor agreement by identifying the rate of pay and fringe benefits these part-time plant operators will receive once they are hired.

### 3. Health Insurance

The Employer notes that previously the Parties have identified specific negotiated health insurance contributions. Thus, the Union's proposal to have them pay the "full premium" is a change in the status quo. It is their position that this change has not been justified. They do note that in support of this attempt to change the Parties' established history of operation under Article XIX, the Union offers the labor agreements covering city employees in Sturgeon Bay and Algoma. However, while both Sturgeon Bay and Algoma pay the full cost of health insurance premiums for their municipal workers, neither provides dental insurance coverage.

Under the Employer's final offer and the new 1989 insurance rates, (which were not known at the time of final offers), bargaining unit employees will be required to pay the balance of the monthly health insurance premiums over and above the Commission's share, which would amount to less than a 10% contribution for health insurance. This is clearly in line with other bargaining unit groups in Door County and Sturgeon Bay. For instance, all five of the County's bargaining units (ambulance service, courthouse, highway, sheriff's department and social services) contribute 10% of the cost of the monthly premiums for family health insurance plans. Similarly, Sturgeon Bay firefighters pay 5% towards the cost of their health and dental insurance coverage.

While the City pays 100% of the costs of single and family health insurance for its police officers and municipal employees, neither group receives dental insurance.

#### IV. OPINION AND DISCUSSION

##### 1. Wages

In making his decision as to which final offer ought to be selected, the Arbitrator must consider the following 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 pension, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in the private employment."

Criteria (d) is the criteria which, under most circumstances, is given the greatest amount of weight by interest Arbitrators. This is because voluntary settlements among a representative group of employees doing similar work in comparable communities is objectively reflective of a collective consensus of an appropriate wage increase. Additionally, this collective consensus is extremely valuable because the Parties in the course of arriving at a satisfactory settlement no doubt gave due consideration to all the various factors affecting wage determinations, to wit, the cost of living, total compensation other public sector settlements, the interest and welfare of the public, etc. Accordingly, such settlements are quite instructive of what other parties in similar circumstances should have agreed to.

However, in this case, the City is clearly distinguished from other utility employees who otherwise, but for the economic situation in Sturgeon Bay, would be quite

comparable. The City has put forth more than sufficient evidence to differentiate them from other employers of utility workers. Their evidence is more than doom and gloom. It portrays a real economic tragedy whose impact on the rate at which wages should increase in the utility department must be reckoned with and cannot be ignored.

Yet, the Arbitrator is not prepared, as the City urges, to totally ignore criteria (d). It would be more fair and most reasonable to consider evidence under criteria (d) but to give it significantly less weight. Moreover, it has often been stated that as the strength of the inferences to be drawn from comparable comparisons weakens, the weight to be given the other criteria increases. Such is the case here. The inferences to be drawn from criteria (d) in view of the state of the shipping industry and its impact on the City's economy are materially affected. Because of the impact of the economic downturn settlements or arbitrations under criteria (e) in the local community take on particular importance because they are reflective of how other public employees under similar economic circumstances have reacted (in the case of voluntary settlements) or are reflective of how other Arbitrators (in the case of involuntary settlements) have measured and weighed the impact of the economic situation.

Before assessing the amount of weight to be given to criteria (d) it must be determined which groups of employees performing similar services is more appropriate for

comparison purposes. The Arbitrator believes that for comparison purposes under criteria (d), the comparable group suggested by the Employer along with the Algoma utilities is the most appropriate. Using the data presented in the record, the following shows the average rate at 3 benchmarks in 1987, the average rate of increase in dollars and percents and the average 1988 rates:

	1987 Average Rate	1988 Average Rate	Increase \$/%
<u>LINEMAN</u>			
Comparable Average	11.64	11.95	.31/2.7%
Sturgeon Bay	13.87	14.08 City 14.29 Union	.21/1.5% .42/3%
<u>METER SERVICEMEN</u>			
Comparable Average	11.18	11.56	.38/3.4%
Sturgeon Bay	12.78	12.96 City 13.16 Union	.14/1.5% .38/3%
<u>WATER DEPARTMENT</u>			
Comparable Average	10.54	10.77	.23/2.2%
Sturgeon Bay	12.12	12.30 City 12.48 Union	.18/1.5% .36/3%

This data shows that the average rate of increase in the comparables is, on the face of it, more consistent with the Union's offer. This deserves some consideration. However, the economic situation in Sturgeon Bay, as distinguished from the comparables, strongly suggests that strong inferences cannot be drawn from these comparables. When the economic

situation is considered under the guise of the 'interest and welfare of the public' it is clearly unreasonable for the Commission's employees to expect the same wage rate increase as enjoyed by comparable employees. It is even more unreasonable that the Union's 1988 proposal exceeds the average increase slightly for linemen and for employees in the water department. Moreover, given the fact that the wage rates in Sturgeon Bay substantially exceed the wage rates in the comparables a less than average increase is not devastating. Even at the City's increase of 1.5% the utility workers in Sturgeon Bay will be paid far more than other municipal utility workers in similar size cities in Northeast Wisconsin.

These considerations are not offset by the fact that the raw cost of living data favors the Union's offer. The cost of living factor is often subsumed in the comparable settlements. The 1988 settlements suggest that a rate of increase, given the economic circumstances, ought to be closer to the City's offer than the Union's. Regarding 1989 the Union's offer is consistent with the cost of living index. But this isn't the sole determinant under the statute. Moreover, it is binding that the Parties have used COLA clauses in the past.

The Arbitrator is directed to consider (under criteria 'e') other public sector settlements in the same and other communities and private sector settlements in the same and other communities (under criteria 'f'). It is the opinion of



the Arbitrator that when there is an economic event with the magnitude of the demise of the local ship building industry, other public and private settlements, which are of an equally local nature become more important than they would ordinarily. The data presented on this score by the Employer shows that the City's offer is more consistent overall with the wage increases granted other City employees. This is very important. It sets up equity considerations which dictate that to whatever extent possible all city workers should be treated relatively the same. This is particularly true when there is an economic crisis. The Union's final offer, which would amount to approximately 7% over two years, is far out of step with other city workers and the economic situation in the community.

It weighs against the Commission's offer that it wasn't up to snuff with the 2.0%/2.0% offered employees in the City unit or the 2.5%/2.5% in the fire unit. However, the City's final offer was submitted prior to Bay Ship's announcement that it would cease building ships. Also, the fire contract was the first time the firefighters had a wage rate increase since 1983-84. Also, as noted before, the fact that the utility workers are in a leadership position relative to comparables helps take the sting out of the fact the Commission's offer is a little bit below what the City offered other employees.

## B. Health Insurance

This issue is considered, for the most, a draw with the slight advantage, if any, going to the Employer. The Union is departing from the status quo by changing the contribution language from a dollar amount to "full". This is not insignificant since the Parties had voluntarily got away from this language several years ago.

On the other hand, the Employer departs from a long history -- regardless of the language -- of, in the end, paying all of the health insurance premiums. Of course much of the problem -- for both parties -- was created by the fact that the 1989 insurance rates were not known at the time of the final offers.

The end result under the Employer's offer is that in 1989 an employee who has family coverage would have to pay \$22.89 per month. The 1988 rate was \$202.56 for family. The Employer agrees to pick up \$212.69 in 1989 and the rate ended up at \$235.58. The fact that the employee may end up picking up a portion of the health insurance cost is not foreign to these parties since the status quo language provides that the balance of the health insurance premium shall be paid by the employee by payroll deduction. Moreover, other city workers (the firefighters) pay 5% of their premiums and other city workers don't have dental insurance. Thus, even though these employees will have to pay a small amount of the premium, the Commission employees

on a total compensation basis are still ahead of other city workers with respect to insurance benefits. This gives the slight edge to the Employer.

C. Part-time Employees

The Arbitrator agrees with the Union that the fact the Employer failed to bargain on the issue of a part-time wage rate weighed against their offer. It is repugnant to the process of good faith bargaining to slip into a final offer an issue which had not previously been fully addressed between the Parties.

IV. CONCLUSION

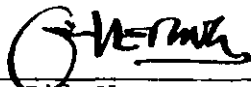
While the Arbitrator agrees with the Union on the issue of wages for part-time employees, the question in this case, given the 'either or' nature of interest arbitration under the relevant statute, is whether the fact the Commission slipped a quick one in on the Union outweighs the other issues. On the other issues, the Commission's offer is more reasonable. The Commission's offer is more consistent and balanced with all the statutory factors in light of the unique economic circumstances in Sturgeon Bay, with respect to wages and benefits.

The Arbitrator must conclude that the wage and benefit issues outweigh the issue of part-time pay. The wage and benefit issue has a greater impact on the Parties and the interest and welfare of the public. At the present time, there are no part-time employees and if any are hired for

the balance of 1989, the Union will have an opportunity at the conclusion of this contract term to address the issue of an appropriate part-time rate.

AWARD

The final offer of the Employer is accepted and made part of the Parties' 1988 and 1989 contract.



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Bill Vernon, Arbitrator

Dated this 3rd day of February, 1989 in Eau Claire, Wisconsin.