ARBITRATION OPINION AND AWARD

In the Matter of Arbitration)
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Between)
)
WAUSAU AREA TRANSIT SYSTEM)
)
And)
)
LOCAL UNION 1168, AMALGAMATED)
TRANSIT WORKERS)
)

Case 3
No. 39483
INT/ARB-4587
Decision No. 25675-A

Impartial Arbitrator

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Hearing Held

September 23, 1988
Wausau, Wisconsin

Appearances

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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Wausau Area Transit System and Local Union #1168 of the Amalgamated Transit Workers, with the matter in dispute the terms of a two year renewal labor agreement covering July 1, 1987, through June 30, 1989. During their preliminary negotiations the parties reached agreement with respect to a number of modifications of the prior agreement, but they remained at impasse on four items:

(1) contract language governing the use of part-time employees;

(2) seniority language governing the layoff of bargaining unit employees;

(3) Employer payment for safety shoes for certain bargaining unit employees;

(4) the effective date of certain equity adjustments in wages for certain classifications.

The parties exchanged their initial proposals for the renewal agreement on April 27, 1987, after which they met on twelve occasions in an unsuccessful attempt to arrive at a negotiated settlement. The Employer on October 9, 1987, filed a petition with the Wisconsin Employment Relations Commission requesting interest arbitration of the dispute in accordance with the Municipal Employment Relations Act. After the completion of a preliminary investigation by the Commission, a timely petition was filed for declaratory relief, alleging that a Union demand related to a non-mandatory item of bargaining; the Commission ruled on the petition for declaratory relief on July 7, 1988, which thereby removed the blocking proceeding and allowed the matter to proceed. The parties exchanged final offers on August 23, 1988, after which the Commission on September 13, 1988, issued certain findings of fact, conclusions of law, certification of the results of investigation and an order directing arbitration; on September 28, 1988, it issued an order appointing the undersigned to hear and decide the matter as arbitrator.

A hearing took place in Wausau, Wisconsin on September 23, 1988, at which time the parties received full opportunities to present evidence and argument in support of their respective final offers. Both parties closed with the submission of post-hearing briefs, after which the record was closed by the Arbitrator on January 23, 1989.

THE FINAL OFFERS OF THE PARTIES

The final offers of the parties are hereby incorporated by reference into this decision, and they provide in summary as follows:

(1) In connection with the agreed upon equity adjustments in wages, the Employer proposes an effective date of July 2, 1988, while the Union proposes January 1, 1988.

(2) In the area of safety shoes, the Union proposes that the Employer pay up to 50% of the actual cost of such shoes on a yearly basis, that the shoes cost $50.00 or more, and that eligible employees be required to wear safety shoes only if they seek reimbursement from the City for their purchase. The City proposes to reimburse eligible employees for up to 50% of the cost of one pair of such shoes over the life of the two year renewal agreement, and proposes also that all eligible shop employees be required to wear safety shoes.

(3) The layoff language dispute concerns the wages and fringe benefits to be paid to employees who are laid off from full-time driver positions, and who accept employment as part-time drivers. The Employer proposes to continue to pay the full-time driver rate and to pro-rate fringe benefits, for a six month period after layoff. The Union proposes retention of the full time driver rate for a twelve month period after layoff, and additionally proposes that the Employer continue to provide full health insurance benefits to such employees for a six month period after layoff.

(4) In the area of working hours and overtime, the Union proposes new language which would govern the use of part-time employees. The Union's proposal provides principally as follows: (1) that part-time employees would perform no work in excess of 30 hours in any week; and (2) that part-time employees would normally be assigned to work trippers (or pieces of work) not exceeding four hours in length. Exceptions to the four hour limitation would apply in the event of emergency situations where no full-time operator was available, and/or where a full-time operator requested time off, and the affected

run could not be filled by a full-time operator without the use of overtime.

The Employer opposes the introduction of new language restricting the number of hours that can be worked by part-time employees, and the proposed limitation upon the type of work that can be assigned to part-timers.

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 UNION

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

(1) In general, that consideration of the statutory criteria and the equities of each situation, supported a finding that each element of the Union's final offer was more worthy than the corresponding elements of the Employer's final offer.

(2) That various considerations supported the selection of the Union proposed schedule for implementation of the agreed upon equity adjustments to certain wage rates.

(a) Regardless of the costs of a January 1, 1988, bump in wage rates, that the Employer failed to introduce any evidence or arguments that it was unable to pay the costs of the increase.

(b) That the estimated additional costs of the Union's implementation schedule is $5,117; absent any showing that this estimated cost is burdensome on the Employer's ability to pay, that the additional costs should be regarded as immaterial.

(c) That consideration of ATU wage rates in Wisconsin cities, and any analysis of the timing of equity adjustments given to other Wausau municipal employees supports the position of the Union in the case at hand.

(d) That consideration of the wages paid ATU members in six Wisconsin cities supports the position of the Union in this case; that these individuals received increased wages averaging 111.4% over the last eleven years, while Wausau's wages increased only 80.9%. That factoring in the equity adjustment on

January 1, 1988, would only improve the Wausau increase to 87.3% over the eleven year period.

(c) That comparison with non-ATU employers in Wisconsin also supports the Union's equity adjustment proposal. After the proposed adjustment, that Wausau's operators will be at least 81¢ behind every system except Manitowoc (which is 1/3 the size of Wausau); by way of example, that Oshkosh will be $1.41 ahead of Wausau.

(f) That consideration of equity adjustments paid to other City of Wausau employees, favors the selection of the Union's proposal. That certain DPW employees received equity adjustments on the first day of their renewal agreement, some twelve months before the Employer's proposed adjustment date in the case at hand; regardless of possible tradeoffs, that equity adjustments should take place as soon as possible.

(3) That various considerations favor the Union's proposal dealing with laid off operators who bump down into part-time positions.

(a) That the issue is unlikely to arise in the immediate future, due to the fact that the Employer expects an increase in service.

(b) That an employee compelled to work part time to avoid a layoff should be paid a fair wage rate; that a 50% cut in pay cannot be justified merely because an employer temporarily reduces the hours that the employee works.

(c) That the Employer recognizes the inherent unfairness of wage cuts by proposing that wages remain frozen for six months; that an additional six months is justified to shield employees from significant reductions in total income.

Similarly, that the Employer agrees to continue fringes on a pro-rata basis for six months; that the Union prefers to ensure continuation of one critical fringe benefit, health insurance, that employees simply cannot do without.

(d) That a 1985 La Crosse arbitration award provided for three months pay for a laid off employee, and that the employer continued to pay the cost of health insurance for one year; in the matter at hand, that the Union is merely asking that wage rates not be slashed arbitrarily, and that health insurance costs not be shifted to an employee who has already been reduced to part-time employment.

(4) That the offer of the Union relative to the use of part-time operators is justified by consideration of the record.

(a) That full-time employees should be protected from the arbitrary transfer to part-timers, of the work they rely upon to earn a living.

(b) That by requiring the Employer to assign regular runs to available full-timers, the proposal would ensure sufficient work for those employees who have a permanent relationship with the Employer.

(c) That management would be protected under the Union's proposal if no full-time operator was available, or if a requested day off was the reason for an absence and overtime would otherwise be necessary to fill a run with a full-time employee.

(d) That part-time employees should not be used as full-time employees in disguise; if a person works 35-40 hours per week, they should be paid wages and receive benefits accordingly. That to allow part-time employees to regularly work in excess of 30 hours at 50% of the full-time wage, is discrimination that cannot be justified by operational needs.

(e) That while part-time employees are frequently required because of peak hour service, the Union proposed tripper limitation of four hours is a reasonable one.

(f) That the Union's approach is consistent with the practices in an overwhelming number of transit systems in Wisconsin and the nation.

That the practices of Milwaukee, Eau Claire, La Crosse and Beloit should be particularly considered by the Arbitrator.

(g) That the Union's proposal seeks a balance between the City's right to determine service levels and the member's rights to fair wages, decent benefits, and reasonable hours of work. Largely on the basis of the established pattern of how part-time transit employees are utilized, that the Union's position is justified.

(5) That adoption of the Union's proposal in the area of safety shoes is justified by the record.

(a) Stated simply, that the Union proposes that the Employer and the employees split the cost of safety shoes, that the allowance be available each year if shoes are needed, that the shoes be of a minimum price to ensure quality, and that if an employee uses the allowance he should be required to wear the shoes.

(b) That the proposal has a limited and insignificant cost, is fair and should be granted.

In summary, that the Union's final offer reflects a balanced, reasonable and cost effective approach to the matters in dispute, that it mirrors the practices of other transit systems, that all transit systems have the same basic operational and financial needs, and that consideration of the entire record in these proceedings supports its selection by the Arbitrator.

POSITION OF THE EMPLOYER

In support of its contention that the final offer of the Employer is the more appropriate of the two offers in issue, the Employer emphasized the following principal arguments.

(1) That the primary issue represented in the final offers is the Union's request for restrictive language on the utilization of part-time employees, versus the Employer's request for the retention of the status quo on work scheduling.

(a) That the burden of proof to justify the language change rests squarely with the Union;

that the Union is proposing changes which run contrary to the operational procedures of the Transit System that have existed for over twenty years, and it has failed to justify the changes on the basis of the internal operations of the Wausau Area Transit System.

(b) That arbitrators have long recognized that a substantial burden of proof must be met by the party who proposes changes in the status quo and the incorporation of new language into the labor agreement. That a substantial number of Wisconsin interest arbitrators have cited these general principles in their decisions and awards.

(c) That the case to be made by the proponent of change must also take into consideration the total bargain reached by the parties; in the matter at hand, that the parties have agreed to a large number of contract changes which are reflected in the record, and that the Union proposed limitation upon the use of part-time employees can be characterized as "the straw that broke the camel's back."

(d) That arbitrators have recognized that changes which substantially affect the working relationship between the parties should normally be negotiated, rather than obtained through the interest arbitration process.

(e) That arbitrators have required the proponent of substantial change to demonstrate not only the need, but also a quid pro quo for the proposed change. That there is nothing in the record to indicate the requisite quid pro quo in the matter at hand.

(f) That the Union has failed to offer any justification for the proposed new and extremely restrictive language on the use of part-time employees; that there has been no showing of abuse or advantage taken by the City in either the scheduling of part-time employees, or in the denial of overtime to full-time employees. To the contrary, that evidence in the record indicates that full-time employees have received substantial overtime, and the system has maintained seventeen full-time bus

drivers for the past four to five years, with only minor layoffs which were due to the discontinuation of certain bus runs.

(g) That the City's past use of part-time employees as much as forty hours per week has only arisen when full-time employees were unavailable due to vacation or sickness, and these situations are not regular occurrences.

(2) That the Union proposal for restrictions in the use of part-time employees is inherently unreasonable, and would also promote litigation due to its generation of differing interpretations.

(a) That language placing a thirty hour maximum on the amount of time that can be worked by part-time employees, is an absolute restriction upon the Employer's prerogative to assign work and to determine work schedules; that it would destroy the flexibility needed to provide service to the riding public.

(b) That adoption of the Union's proposal would result in no flexibility for the system to address scheduling needs in various instances such as emergencies, or instances where a number of employees were off work due to illness and/or vacation.

(c) That evidence in the record shows that the scheduling of routes is not a simple task, but rather hinges upon public demands, availability of employees and buses, and scheduling of special runs for business operations.

(d) That even the most recent contract settled by the ATU in Wisconsin, with the City of Waukesha, gave recognition to the need for flexibility in the scheduling of part-time employees.

(e) That the Employer would not have voluntarily agreed to the language proposed by the Union, due to the absolute restrictions and the lack of flexibility in the language, which language would severely hamper the scheduling options of the system.

(f) That the Union proposed limitation upon the type of work that may be assigned to part-time employees is as troublesome as the absolute restriction on the number of hours which may be worked by such employees. Similar language is not found in any contact language from comparable cities, and is not even identified in the comparative data provided by the Union. Further, that the Union proposed reference to emergencies is ambiguous, and would lead to future difficulties in its application.

(g) That the portion of the Union proposal obligating the Transit Manager to give due regard to the suggestions and alternatives offered by the Union before proceeding with work schedule changes, is both imprecise and unclear, and could lead to litigation over any decision to change schedules.

(3) That retention of the current contract language on work schedules and part-time employees, is justified by arbitral consideration of comparisons and trends.

(a) That the retention of the status quo is supported by arbitral consideration of comparisons with the transit systems in Beloit, Eau Claire, Fond du Lac, Janesville, La Crosse, Manitowoc, Oshkosh, Sheboygan and Stevens Point. That these generally similar employers do not uniformly restrict the use of part-time employees as proposed by the Union.

(b) That the above comparisons do not reflect the circumstances or the agreement entered into by the parties when they addressed the use of part-time employees, nor is there any indication relating to the type of runs and scheduling done by the systems.

(c) That the evidence in the record relating to the practices of other employers indicates the individuality of transit system operations, and does not support the Union proposal to restrict part-time employees. That there is simply no consistent pattern among comparables, which would support the final offer of the Union.

(4) That arbitral consideration of data from contracts throughout the County show an evolving pattern to lessen, rather than to increase, restrictions on use of part-time employees.

(a) That Union data summarizing restrictive provisions that exist in various city contracts throughout the County, do not identify the history and the background of the restrictions.

(b) That the data offered by the City shows a clear trend away from the type of restrictions proposed by the Union in the matter at hand. In this connection it cited the cities of San Diego, Los Angeles, Portland, Cleveland, Indianapolis, Phoenix, Minneapolis, Washington, New Orleans, San Bernardino, Chicago, Columbus, St. Louis, Sacramento and Tampa.

(5) That the City's final offer on the items of secondary importance, wage adjustments, layoff, and safety shoes, is more reasonable and should be favored by the Arbitrator.

(a) That both parties agree that additional wage adjustments are in order for certain positions covered by the agreement, with the only disagreement the timing of such adjustments. That the City's recommendation that the increases be applied during the second year of the agreement is a more traditional approach than the Union proposal that they be implemented mid-way through the first year. That the timing proposed by the City coincides with the pattern of settlements for all other City of Wausau bargaining units.

That the City's proposal is equitable and reasonable, and no persuasive case has been made for the additional $5,117 in expenses inherent in the Union proposed timetable.

(b) That the position of the Employer is more appropriate in the area of layoff language. That the six month proposal of the City is a fair and equitable timetable for the treatment of an employee laid off by the System. That the one year proposal of the Union would unreasonably extend different levels of employment and wage rates among

part-time employees, and that other union contracts cited by the Union do not even allow for continued employment of full-time drivers who are laid off, even when reserve drivers exist in the system.

(c) That the differences of the parties in the area of safety shoes relate to how much the Employer will pay, and whether Employees will be required to wear safety shoes. That the City is insisting that shop employees who perform maintenance and repair work on bus vehicles wear safety shoes, and it has offered to reimburse employees for 50% of the cost of the shoes. That the Union would make the wearing of safety shoes optional with the employees, and would only pay the costs of shoe purchases for those who elect to wear the shoes. That any decision requiring the wearing of safety shoes should be left to the Employer, and that its offer also provides for reimbursement to the employee for 50% of the costs of such shoes.

In summary, that the primary issue relates to the use of part-time employees, and that the Union has failed to justify its demand for a change in the status quo. That the Employer's position on wage adjustments, layoff language and safety shoes is also more appropriate under the statutory criteria, than that of the Union; that the Union has failed to justify an earlier implementation date for the equity wage adjustment, that the layoff language proposed by the City provides excellent benefits for those laid off, and that the City's safety shoes proposal provides for the safety of employees and also provides a financial benefit for the affected employees.

FINDINGS AND CONCLUSIONS

Although there are four impasse items before the Impartial Arbitrator in these proceedings, each of the parties conceded that the Union proposed limitations upon the assignments of part-time employees was the most important of the items in dispute. In light of the fact that the Union's proposal represents a significant departure from the prior negotiated status quo, some preliminary observations are in order, relating to normal arbitral practice in the handling of such disputes.

Although neither the past practice of the parties nor their negotiations history is specifically referenced in the

statute, the undersigned will reference the fact that these factors fall well within the general scope of Section 111.70 (4)(cm)(7)(j) of the Wisconsin Statutes. Interest arbitration is not a substitute for or an alternative to the bargaining process; rather, it is an extension of negotiations, and ideally it should result in the same settlement that would have been reached by the parties, had they been successful in arriving at a voluntary agreement. These considerations and their underlying rationale are rather well described in the following extract from the book by Elkouri and Elkouri:

> "In a similar sense, the function of the 'interest' arbitrator is to supplement the collective bargaining process by doing the bargaining for both parties after they have failed to reach agreement through their own bargaining efforts. Possibly the responsibility of the arbitrator is best understood when viewed in that light. This responsibility and the attitude of humility that appropriately accompanies it have been described by one arbitration board speaking through its chairman, Whitley P. McCoy:
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> > 'Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination, upon considerations of policy, fairness, and expediency, of what the contract rights ought to be. In submitting this case to arbitration, the parties have merely extended their negotiations - they have left to this Board to determine what they should by negotiations, have agreed upon. We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men have agreed to?...To repeat, our endeavor will be to decide the issues, as upon the evidence, we think reasonable negotiators, regardless of their social or economic theories might have decided them in the give and take of bargaining...'." (emphasis supplied) 1./

In any attempt to apply the above principles to the dispute at hand, it should be kept in mind that an interest arbitrator will normally be extremely reluctant to overturn

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1./ Elkouri, Frank and Edna Asper Elkouri, How Arbitration Works, Bureau of National Affairs, Fourth Edition - 1985, pp. 504-505.

established benefits and/or will be equally reluctant to add new benefits or to innovate, unless the statutory criteria are rather clearly met. The reluctance of interest arbitrators to disturb existing provisions, or benefits contained in prior agreements was also described as follows by the Elkouris:

> "Arbitrators may require 'persuasive reasons' 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 arbitrating the terms of a renewal contract, one arbitrator would consider seriously 'what the parties have agreed upon in their past collective bargaining, as affected by intervening economic events ***' The past bargaining history of the parties, including the criteria that they have used, has provided a helpful guide to other 'interests' arbitrators." 2./

The normal role of the interest arbitrator, including a marked reluctance to plow new ground or to modify past practices, is also well described in the following excerpts from a frequently cited interest arbitration decision by Arbitrator John Flagler:

> "In this contract making process, the arbitrator must resist any temptation to innovate, to plow new ground of his own choosing. He is committed to producing a contract which the parties themselves might have reached in the absence of the extraordinary pressures which led to the exhaustion or rejection of their traditional remedies.
>
> The arbitrator attempts to accomplish this objective by first understanding the nature and character of past agreements reached in a comparable area of the industry and in the firm. He must then carry forward the spirit and framework of past accommodations into the dispute before him. It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving to either party that which they could not have secured at the bargaining table." 3./

2./ How Arbitration Works, p. 843.

3./ Des Moines Transit Co., 38 LA 666, 671.

While a theoretically stronger case can be made for innovation in public sector interest arbitration, where the parties normally lack the ability to take economic action in support of their bargaining positions, the Employer is quite correct that the weight of authority in the Wisconsin interest arbitration process is that the proponent of change has the obligation to make a very strong case in support of its proposals. Wisconsin interest neutrals, in other words, have generally recognized the responsibility to consider and to apply the statutory criteria in such a manner as to favor the final offer which most closely approximates the settlement which the parties would have reached across the bargaining table, had they been able to do so. They will innovate and/or look beyond past language and practices, only where a very persuasive case has been made for such changes.

Prior to getting into consideration of the application of the arbitral criteria to the four impasse items, the Arbitrator will offer some additional preliminary observations relating to the time frame within which the arbitral criteria are normally applied. There is evidence and argument in the record relating to the long term earnings progression of those in the bargaining unit versus certain other groups of employees presented for comparison purposes. Interest arbitrators will normally refuse to go beyond the parties' most recent trip to the bargaining table, in considering either wage comparisons or cost-of-living considerations. The underlying basis for this principle is arbitral reluctance to reopen or to relitigate the parties' prior negotiations or their prior interest arbitrations. This principle and its underlying basis is well described in the following extract from an authoritative book on wages arbitration by Irving Bernstein.

> "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 identical with that taken by arbitrators in the case of a reopening clause, namely, the presumption that the most recent negotiations disposed of all the factors of wage determination. 'To go behind such a date,' a transit board has noted, 'would of necessity require a relitigation of every preceding arbitration between the parties and a reexamination of every preceding bargain concluded between them.' This assumption

> appears to be made even in the absence of evidence that the parties explicitly disposed of cost-of-living in their negotiations. Where the legislative history demonstrates that this issue was considered, the holding becomes so much the stronger." 4./

On the basis of the above, the Arbitrator has preliminarily concluded that any cost-of-living or comparison data, or related arguments, which are based upon time periods prior to the effective date of the parties' 1985-1987 agreement, are entitled to little or no weight in these proceedings.

The Use of Part-Time Employees

The portion of the Union's final offer addressing the use of part-time employees would generally preclude the Employer from using such employees in excess of thirty hours in any week, and would limit the assignments of such employees to trippers not exceeding four hours in length. The initial question before the Arbitrator is whether the Union has met its burden of proof, and established a persuasive case for its significant proposed change in the status quo.

In support of its position the Union presented comparison data and various equitable arguments; the Employer submitted that the Union had failed to establish a basis for the change, cited the lack of evidence of any past problems or abuses in the assignment of work to part-timers, and urged that the practices of comparable transit systems in Wisconsin did not support the selection of the Union's final offer.

In first looking to the comparisons urged by the Union, it must be noted that it used extremely broad comparisons, and it did not attempt to select cities which were comparable to Wausau on the basis of their characteristics or location.

(1) In its Exhibit #20, the Union cites examples of transit systems which have adopted restrictions limiting the assignment of part-time employees to trippers. It must be noted, however, that many of the systems provided for exceptions, which would distinguish their contracts from the Union's proposal in the matter at hand, and of the eighty-seven listed cities, only five are within the State of Wisconsin.

4./ Bernstein, Irving, The Arbitration of Wages, University of California Press (Berkeley and Los Angeles), 1954, p. 75 (Included citation: Public Service Coordinated Transport and Amalgamated Street Railway Employees, 11 LA 1050)

(2) Union Exhibit #21 references one-hundred and sixteen systems which have maximum hours limitations upon the use of part-time operators, but only three of the systems are located within the State of Wisconsin.

(3) Union Exhibit #22 contains references to one-hundred and ten systems which limit the number of part-time operators, but only three of the systems are located within the State of Wisconsin.

(4) Union Exhibit #23 contains a listing of one-hundred and thirteen systems, with references to the levels at which part-time operators are paid; four of the systems are located in Wisconsin, and the overwhelming majority of the systems pay the full-time rate to part-time drivers, including three of the four Wisconsin systems cited in the exhibit. The pay rate for part-time employees is not, however, directly in issue in these proceedings.

While there is a good deal of information contained in the Union's exhibits, much of it is extremely general, and many of the systems are simply not reasonably comparable to the Wausau Area Transit System. Additionally, and as argued by the Employer, there is no background information in the record indicating the circumstances, conditions and practices which led the various parties to the inclusion of the restrictions contained in their agreements. In the latter connection, it seems clear that many of the restrictions were individually crafted to the underlying practices and circumstances present in each system. Under the circumstances, the comparison data and arguments advanced by the Union are not entitled to signficant weight in these proceedings.

In next addressing the equitable considerations advanced in connection with the Union's proposal, the Arbitrator must concede that some persuasive theoretical arguments have been advanced by the Union. An employer should not be allowed to arbitrarily transfer work from full-time to part-time employees, for the purpose of undermining the rights and benefits of full-timers, and if there was any evidence in the record indicating such actions on the part of the Employer, the Union's arguments would have been much more persuasive. The record indicates rather clearly, however, that the Employer has offered stable employment to full-time operators, and that its work assignments to part-time employees have been reasonably undertaken. There is simply no indication in the record of

of any unreasonable actions on the part of the Employer, sufficient to justify the selection of the Union's offer on remedial grounds.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the Union, as the proponent of change, has simply not met its burden of proof, and has not established the requisite persuasive basis for the selection of its proposed restrictions on the use of part-time employees.

In addition to the above, the Arbitrator will add at this point that he has carefully examined the contents of Employer Exhibits #24 through #29, which advance the use of Eau Claire, Stevens Point, Oshkosh, Manitowoc, Sheboygan, Fond du Lac, La Crosse, Janesville and Beloit as primary comparables, and I have also reviewed Employer Exhibits #30 through #38, which examine certain contract language from the various transit systems. While various of the systems either employ no part-time employees, or utilize certain limitations upon the use of part-timers, the practices apparently vary greatly among the various systems. Consideration of these exhibits does not provide a persuasive basis for the selection of the Union's proposed limitations upon the use of part-time employees!

The Effective Date of the Equity Adjustments in Wages

The parties have agreed to the adoption of an equity adjustment in wages for certain bargaining unit employees, and the only dispute in this area is as to the effective date of the increase. The Union proposes a January 1, 1988, effective date, while the Employer proposes to make the change effective on July 2, 1988.

While the Union presented and emphasized certain historical data and comparisons which preceded the effective date of the parties' last agreement, as discussed above, this material will not be accorded significant weight in these proceedings.

None of the more traditional arbitral criteria were persuasively emphasized by either party in connection with their arguments relating to the implementation date of the equity wage adjustments, and the Arbitrator has preliminarily concluded that a persuasive case has not been made for either of the two dates. There is no dispute as to the parties' mutual recognition of the need for an equity adjustment in wages for certain employees and, on this basis, it could be reasonably concluded that an adjustment at the beginning of the agreement would be justified. On

this basis, the position of the Union on this impasse item is slightly favored, but there is no basis for assigning determinative weight to this impasse item.

The Seniority Rights of Laid Off Employees

In this area the parties differ with respect to the length of time that a full-time driver who bumps into a part-time position would receive the full-time rate, with the Employer proposing six months and the Union proposing twelve months; the Union also proposes retention of group medical insurance at Company cost for a six month period, while the Company proposes retention of pro-rated fringe benefits for six months.

In support of its position, the Union emphasized various equity based arguments. It urged that both parties recognized the inherent unfairness of wage cuts, as was apparent from the Employer's proposal for six months of wage retention and six months of pro-rated fringes. It urged that a fifty percent reduction could not be justified merely because of a reduction in the number of hours worked, and urged that health insurance was a critical benefit that should not immediately be cut.

The Employer urged consideration of inherent inequities contained in the concept of having part-time employees working at different rates for extended periods, and it argued that various contracts cited by the Union did not allow for continued employment of full-time drivers who were laid off.

Without unnecessary elaboration, the Arbitrator will observe that a consideration of the various arbitral criteria against the evidence and the argument of the parties, does not definitively favor the position of either party on this impasse item.

The Safety Shoe Issue

The parties principally differ here in connection with how frequently the Employer is obligated to contribute to the purchase of safety shoes, and who is to determine whether eligible employees are obligated to wear such shoes.

The Union urged that its offer was fair and reasonable, submitted that the cost was insignificant, and urged that it be adopted. The Employer urged that it should retain the right to determine who is to be required to wear safety shoes, and that it would then reimburse employees for 50% of the cost of such shoes.

While this impasse item was not extensively addressed by the parties, it must be recognized that the Employer is responsible under various provisions of state and federal law for the health and safety of its employees, and for maintaining a safe place to work. As argued by the Employer, decisions as to when and where safety equipment should be required are normally left up to reasonable determination by employers, and this consideration favors the position of the Employer on this impasse item.

Summary of Preliminary Conclusions

As described in more signficant detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions:

(1) The Union proposed limitations upon the assignment of part-time employees is the most important of the four impasse items in dispute in these proceedings.

(2) Wisconsin interest arbitrators operate as an extension of the negotiations process, and they normally favor the settlement that the parties would have reached across the bargaining table, but for their inability to agree. They are extremely reluctant to overturn established practices or benefits or to innovate, unless the proponent of change has made a very persuasive case.

(3) Any cost-of-living or wage comparison data which is based upon time periods prior to the effective date of the parties' 1985-1987 agreement, are entitled to little or no weight in these proceedings.

(4) Neither the comparisons nor the equitable arguments advanced by the Union in support of its proposed limitations upon the use of part-time employees, has established a persuasive basis for the selection of the Union's proposal in this area.

(5) The record slightly favors the position of the Union in the area of the timing of certain equity wage adjustments.

(6) The record does not definitively favor the position of either party in the matter of the

seniority rights of full-time drivers who are laid off and accept employment as part-time employees.

(7) Arbitral consideration of the responsibility of the Employer for the health and safety of employees, and for maintaining a safe place to work favors the position of the Employer on the safety shoe impasse item.

Selection of the Final Offer

Based upon a careful consideration of the entire record in these proceedings, the Impartial Arbitrator has concluded that the final offer of the Employer is the more appropriate of the two final offers. The conclusion is particularly indicated by arbitral consideration of the positions of the parties on the Union proposed limitations upon the use of part-time employees.

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 Wausau Area Transit System is the more appropriate of the two final offers before the Arbitrator.

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

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

March 23, 1989