ARBITRATION OPINION AND AWARD

In the Matter of Arbitration)
)
Between)
)
VILLAGE OF EAST TROY)
)
And)
)
INTERNATIONAL BROTHERHOOD)
OF TEAMSTERS, LOCAL 579)
)

CASE 34
NO. 45050
INT/ARB-5881
Decision No. 26906-A

Impartial Arbitrator:

William W. Petrie
217 South 7th Street #5
Post Office Box 320
Waterford, WI 53185

Hearing Held:

October 16, 1991
East Troy, Wisconsin

Appearances:

For the Employer:

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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Village of East Troy, Wisconsin and the International Brotherhood of Teamsters, Local Union 579, with the matter in dispute the terms of a three year renewal labor agreement covering January 1, 1991 through December 31, 1993. The final offer of the parties differ in the following major respects: the wage rates to be paid during the term of the agreement for the Wastewater Operator/Laboratory Technician and the Water Works Operator/Mechanic classifications; the reclassification of certain named employees to higher rated jobs; the longevity pay maximums to apply during the term of the agreement; the levels of individual and family deductibles in health insurance to be assumed by employees, beginning in the second year of the agreement; the creation of a Non-Certified Assistant Mechanic Classification; and language changes in Articles 24 and 27, governing changes of health and welfare providers during the life of the agreement, and providing for the listing of bargaining unit employees by name in the renewal agreement.

During their preliminary negotiations the parties were unable to reach full agreement on the terms of their renewal labor agreement, after which the Village on January 2, 1991 filed a petition requesting the initiation of arbitration pursuant to the Municipal Employment Relations Act of the State of Wisconsin. After preliminary investigation by a member of its staff, the Wisconsin Employment Relations Commission on June 5, 1991 issued certain findings of fact, conclusions of law, certification of the results of investigation, and an order requiring arbitration of the impasse; on August 28, 1991, it issued an order appointing the undersigned to hear and decide the matter as arbitrator.

On October 16, 1991 a hearing took place before the Arbitrator in East Troy, Wisconsin, at which time all parties received a full opportunity to present evidence and argument in support of their respective positions. Each party closed with the submission of post hearing briefs and reply briefs, after the receipt of which the record was closed by the Arbitrator effective December 26, 1991.

THE FINAL OFFERS OF THE PARTIES

The final offers of each party, hereby incorporated by reference into this decision, are summarized as follows.

(1) The disputed elements in the final offer of the Union consist of the following: the reclassification of Steven Krohn to the DPW Mechanic Classification; the reclassification of Neil Marini to the Equipment Operator Classification upon the retirement of Dan Rostankowski; the reclassification of John Gerth to the Equipment Operator Classification; an increase in the longevity cap from $750.00 to $1,000.00; $12.50, $13.00 and $13.50 hourly wage rates for the Wastewater Operator/Laboratory Technician Classification during the three years of the renewal labor agreement; $12.53, $12.85 and $13.35 hourly wage rates for the Water Works Operator/Mechanic Classification during the three years of the renewal labor agreement; employee health and welfare deductibles of $50.00 per person and $150.00 per family effective January 1, 1992; and the listing of bargaining unit employees by name in Article 24 of the agreement.

(2) The disputed elements in the final offer of the Employer consist of the following: $10.92, $11.36 and $11.81 hourly wage rates for the Wastewater Operator/Laboratory Technician Classification during the three years of the renewal labor agreement; $10.92, $11.36 and $11.81 hourly wage rates for the Water Works Operator/Mechanic during the three years of the renewal labor

agreement; and employee health and welfare deductibles of $100.00 per person and $300.00 per family effective January 1, 1992.

THE ARBITRAL CRITERIA

Section 111.70 (4)(cm)(7) of the Wisconsin Statutes direct the Impartial Arbitrator to give weight to the following 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 costs of any proposed settlement.
d. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
e. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees 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 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 its contention that its final offer is the more appropriate of the two offers before the Arbitrator, the Employer emphasized the following principal arguments.

(1) Preliminarily, it submitted that there are seven separate issues in dispute in the proceedings: special reallocation increases for two job classifications; automatic promotion without posting and testing for three employees; the listing of employees' names in the contract's wage rate section; longevity pay maximum amounts; employee health insurance deductible amounts; the standards involved in changing health and welfare providers; and the creation of a Non-Certified Assistant Mechanic Classification.

(a) That the parties have agreed upon 4% per year across the board wage increases for each of the three years of the renewal labor agreement. That the Union is proposing an

additional $2.00 per hour increase in the first year for the Wastewater Operator/Laboratory Technician Classification, and an additional $1.85 first year wage increase for the Water Works Operator/Mechanic Classification; that the Employer is proposing no special increases for these two classifications.

(b) That the Union is proposing that three employees be promoted to new, higher paying positions in 1991, without the necessity of posting and testing for the positions. That employee Steven Krohn would be promoted to the DPW Mechanic Classification, and employees Neil Marini and John Gerth promoted to the Equipment Operator Classification; that the Village proposes no such automatic promotions of employees in its final offer.

(c) That the Union proposes to list each employee by name in the Contract's Wage Rate Section, while the Village proposes no such listing of employees.

(d) That the Union proposes an increase in the longevity pay maximum to $1,000.00 per year, while the Employer proposes retention of the current $750.00 per year maximum.

(e) That the Union is proposing $50.00 per person and $150.00 per family employee health insurance deductibles, while the Employer is proposing deductibles of $100.00 per person and $300.00 per family.

(f) That the Union is proposing to change the Assistant Mechanic Classification to Assistant Mechanic Non-Certified, while the Employer proposes no change in this area.

(g) That the Union proposes contract language to read as follows: "The Village will select the Health and Welfare provider with no less benefits than the current level of health and dental benefits at no cost to the employees." The Employer proposes retention of language which provides as follows: "The Village will select the Health and Welfare provider with comparable benefits to the current level of benefits at no cost to the employees."

That arbitral consideration of various considerations supports the selection of the final offer of the Village of East Troy.

(2) That the Village proposed external comparables are all Southeastern Wisconsin municipalities located within a 33 mile radius of East Troy, while the Union has proposed five comparables, most of which lack geographic proximity to East Troy and enjoy only the commonality of Teamster representation. That Union proposed comparable Milton will be included by the Employer, as it is located 27 miles from East Troy, while Union proposed comparable Evansville will also be used for comparison purposes, as it is only 13 miles outside of the Employer preferred 33 mile radius.

(3) That the Union has offered no support for its proposal to change the status quo by changing the Assistant Mechanic Classification to Assistant Mechanic-Non Certified.

(a) That it has failed to explain what the impact of the proposed change might be, and to answer the various questions raised by the proposal.

Does it refer to a certified mechanic, or to some other type of certification? If it refers to a certified mechanic, does the proposed change mean that an Assistant Mechanic cannot be a certified mechanic? Does it mean that the Village could only hire someone to be the Assistant Mechanic if that applicant was not a certified mechanic, even if a certified applicant was willing to work as an Assistant Mechanic and receive the pay for that position? If the Village hired a non-certified person who thereafter became certified, would it have to terminate that employee because he was now certified?

(b) That the Union has made a confusing and ambiguous proposal, and it has failed to meet its obligation to establish the basis for a change in the negotiated status quo.

(c) That the proposal would usurp the Village's contractually reserved right to establish the qualifications for a job classification, which right should not be lost through the interest arbitration process.

(4) That the Union has failed to support its proposal to modify the existing standard governing changes in health and welfare providers during the life of the labor agreement.

(a) That the standard in the prior agreement was to allow the Village to make a change in providers during the life of the agreement, if the new provider offered "comparable benefits to the current level of benefits." That the Union proposes to change the status quo by requiring any new provider to offer "no less benefits than the current level of health and dental benefits."

(b) That the prior provision was voluntarily negotiated into the 1988-90 labor agreement, and it should not readily be changed in the interest arbitration process. That the Union has simply failed to meet its obligation to present persuasive evidence and testimony in support of its proposed change in the status quo.

(c) During the term of the expired agreement, that the parties agreed upon the substitution of carriers on the basis of the existence of "comparable benefits." That the Union's current proposal would make it virtually impossible to change carriers during the life of the labor agreement, as no two health insurance plans are identical, and while some benefits will be the same, others are invariably a little better or a little lesser; that the Union's proposal would allow it to block any Village request for change by showing that even one insignificant benefit item was reduced.

(d) That with the current volatility and instability in health insurance, the Village must have the ability to shop the market for "comparable" coverage; that the alternative would allow the Employer to be held captive by an existing carrier. In 1990, that the parties were able to discuss and come up with an alternative health insurance plan that was agreeable to both parties, this avoiding the huge increase

in premiums that had been proposed by Blue Cross.

(e) That the system worked properly in 1990, and that the existing provision encourages voluntary agreement of the parties, rather than the confrontation inherent in the Union's proposal.

(5) That the Village proposed employee health insurance deductibles of $100 per person and $300 per family are reasonable, and are in line with both external and internal comparables.

(a) That four of six comparable municipalities, including Milton and Evansville, have deductibles that are paid by employees.

(b) That Delavan's plan contains a $1,000 per person, $3,000 per family deductible. In 1991, that employees are responsible for the first $200 per person, $400 per family of the deductible amount; in 1992, that employees will be responsible for the first $200 per person, $600 per family of the deductible amount. Thus, these employees will be responsible for a deductible amount twice that proposed by the Village in these proceedings.

(c) That Lake Geneva's plan contains a $3,000 per person, $3,000 per family deductible. That employees are responsible for the first $200 per person, $400 per family of that deductible amount, which amount is $100 more per person and $100 more per family than that proposed by the Village in these proceedings.

(d) That Lake Mills' plan contains the same $100 per person and $300 per family deductions proposed by the Village in these proceedings.

(e) That Mukwonago's plan contains $100 per person and $100 per family deductibles, the latter of which is lower than that proposed by the Village in these proceedings.

(f) That Jefferson offers only an HMO plan, which contains no deductibles.

(g) That only Elkhorn, among the primary external comparables, offers a standard health insurance plan without deductibles.

(h) That Milton's health insurance is offered through the Teamster's Wisconsin Area Health Fund, which offers an up front deductible of $150 per person, with a maximum of three deductibles per family. That employees are responsible for the first $30 of the $150 deductible and the first $90 of the family deductible; that the plan has a major medical co-insurance of $450 per person, three per family, with the employee responsible for the first $90 of this $450 co-insurance amount, and the first $270 per family. That the total amount of employee liability is $20 per person and $60 per family more than that proposed by the Village in these proceedings.

(i) That Evansville's insurance is also offered through the Teamster's Wisconsin Area Health Plan, with the Employees responsible for the full $150 per person, three per family deductible, and the full $450 per person, three per family

co-insurance amount. That these employees are responsible for a $600 per person, $1,800 per family out of pocket cost, or six times the deductible proposed by the Village in these proceedings.

(j) That internal comparables also support the selection of the final offer of the Village: that the East Troy Contract provides for a $100 per person, $200 per family deductible; that the Police Dispatcher contract did not provide health insurance benefits for 1990, and the Clerical unit is still negotiating its initial contract. That the Police Contract deductible amount is the same $100 per person proposed by the Village, but is $100 below the Village family deductible, but $50 higher than the Union's proposal in these proceedings.

(k) That the Union's proposal is not even consistent with the level of potential out-of-pocket costs under the old 1989 insurance plan, where the major medical provided a $50 per person, two deductibles per family limit, plus an 80/20% co-insurance payment on the next $2,000 per person, $5,000 per family of covered charges; thus the total potential out of pocket costs under the old plan were $450 for a single plan and $1,100 for a family plan. That the Village's current proposal is substantially less than this, and the Union's current proposal is simply out of touch with what is happening in health insurance programs in the 1990s.

(6) That the Union's proposal to increase the current longevity pay maximum amount from $750 to $1,000 is totally unwarranted.

(a) That the additional $250 proposed by the Union amounts to a wage increase of 12 cents per hour, a 1.1% increase over the average 1990 wage rate in the unit; that neither the external nor the internal comparables support the Union's proposal.

(b) That the 1989-90 Police Contract maximum is $1,000 for employees hired prior to January 1, 1989, but $750 for those hired after this date; and that the Police Dispatcher Contract provided for a $750 maximum amount for all employees.

(c) That five of the eight comparable municipalities (including Milton and Evansville), provide no longevity pay; that only Delavan has a higher maximum amount than East Troy, while the Maximum is $416 in Lake Geneva and $400 in Mukwonago. That it takes 20 years in Lake Geneva to reach the maximum amount, 15 years in Mukwonago, and only 5 years in East Troy.

(d) That the Union has proposed to increase the maximum amount of longevity pay, but it has failed to offer any evidence to justify the proposal; accordingly, that the Arbitrator must reject the Union's proposal in this area.

(7) That the Union has failed to establish any basis for its proposal to list each employee's name in the Contract's wage rate schedule section. Accordingly, that the Arbitrator must reject the Union's proposal in this area.

(a) That the Village has no idea why the Union wishes to list each employee by name in the contract.

(b) That none of the eight external comparables list each employee by name, and only one employee was listed by name in the 1988-1990 agreement.

(c) That the Union's proposal fails to list one employee, and it also lists one former employee who terminated his employment on October 11, 1991.

(8) That the Union has provided no justification for its proposed automatic promotions for three employees, without posting, testing, or meeting the minimum qualifications for the new position. Accordingly, that the Arbitrator must reject the Union's proposal in this area.

(a) That the Union attempted to withdraw this proposal at the start of the scheduled hearing, which request was not agreed to by the Employer; that the Union then indicated that it did not intend to pursue the issue further and was not going to present any evidence in its support.

(b) That the Union identified the resignation of Steven Krohn as the basis for its attempted withdrawal of the demand, but it offered no explanation as to why it was abandoning the demand as it related to incumbent employees Neil Marini and John Gerth.

(c) That Article 16 of the agreement describes certain procedures that are to be followed in the job posting, bidding, training, and employee selection processes; that the Union proposal would ignore these provisions, and the Employer's reserved rights to establish the number of employees needed in each classification and the requisite qualifications, in favor of automatic promotion of three employees to higher paying positions.

(d) That while the promotion of Steven Krohn has become moot, the creation of positions remains a management function, and the Union has failed to show any need for a second DPW Mechanic position.

(e) That neither Neil Marini nor John Gerth is qualified to perform the required duties of an Equipment Operator. That the former is currently precluded from operating large snow equipment, while the latter has frequently failed to follow up on suggestions that he practice to become proficient in the operation of the back hoe.

(f) In addition to the above, that the Village needs only one Equipment Operator.

(9) That there is no basis for the Union's demand for reallocation increases of 19% for the Wastewater Operator/Lab Technician, and 17.6% for the Water Works Operator/Mechanic Classification.

(a) In addressing the external comparables, that the Employer's final offer for the Wastewater Operator/Lab Technician would keep East Troy ranked fourth, while the Union's demand would move the ranking to third, and place the classification at a rate $1.00 per hour above the average. That the Employer's

final offer for the Water Works Operator/Mechanic would retain East Troy's sixth ranking, at $1.11 per hour below average, while the Union's offer would move the ranking to fifth, 22 cents per hour above the average of the comparables.

(b) That changes in the negotiated position of classifications relative to comparables should not normally be imposed through the interest arbitration process; that such action would ignore the fact that the past wage relationships resulted from the give and take of free collective bargaining.

(c) That even if an argument for a catch-up increase could be credited in connection with the placement of the two classifications, such catch-up should normally be accomplished on a gradual basis. That there is simply nothing in the record which would justify either a one year $2.00 per hour and 19% increase, or a one year $1.85 per hour and 17.6% increase.

(10) By way of summary that the selection of the final offer of the Employer is supported by arbitral consideration of the entire record.

(a) That the Union has made three proposals to change the status quo: increasing the maximum amount of longevity pay; changing the standard under which the Village can change the health and welfare provider; and changing the Assistant Mechanic Classification to Assistant Mechanic Non-Certified.

(b) That arbitrators have recognized the need for those proposing a change in the status quo to meet a heavy burden of proof in support of their proposals, but the Union has failed to meet this burden in the case at hand. That arbitrators have also recognized the need for proponents of change in the status quo to offer some quid pro quo for the change, but the Union has failed to offer any such tradeoff.

(c) That the Union's health insurance deductible proposal is totally inadequate for the 1990s, and is not justified by arbitral considerations of comparables.

(d) That the Union's demands for automatic promotions and special position reallocation increases, would result in an excessive one year increase for 5 of the 7 employees in the bargaining unit; that the average increase for these five employees would be $1.52 per hour, or 14.9%, which figure is simply not justified in today's shaky economy.

(e) That the overall impact of the Union's first year economic proposal would be wage rate and longevity pay increases of $19,159, a 12.6% increase over the 1990 wage rate basis of $152,131; that such an increase would be exorbitant, unrealistic and unwarranted.

(11) In its reply brief, the Employer emphasized or reemphasized the following principal arguments.

(a) That the Union's initial brief failed to address three of the issues in dispute in these proceedings: its proposal to list the employee names in the Wage Rate Section of the

Agreement; its proposal to create a Non-Certified Assistant Mechanic; and its proposal to change the existing standard to allow the Village to change health care providers. That the three issues, particularly the last one, relate to significant matters, that they all involve a change in the status quo, that the Union has failed to substantiate the need for any of the changes, and that it has also failed to provide any appropriate quid pro quo for the proposed changes.

(b) That the Union's reliance upon internal comparisons in support of its longevity proposal is not well founded: that the clerical employees were just organized and the Village is proposing the same $750 maximum for new employees, as was negotiated with the Police Association; contrary to the argument of the Union, that 8 of 10 Police Department employees are covered by the $750 maximum for longevity pay; and the latest Police Dispatch contract provides for only a $750 maximum longevity amount. Clearly, that arbitral consideration of internal comparables, favors the employer's position on longevity pay.

(c) Contrary to the argument of the Union that external comparisons are "unilluminating" relative to the longevity question, the external comparisons overwhelmingly support the position of the Village: that five of the eight comparables offer no longevity pay at all; that the maximum amounts in Lake Geneva and Mukwonago are $334 and $350 below the existing $750 maximum in East Troy; that only Delavan has a higher maximum than the Village of East Troy, and its maximum amount is approximately $100 below the maximum amount proposed by the Union.

(d) Contrary to the argument advanced by the Union, that the Employer's argument based upon the relative maximum amounts of time required to reach the longevity maximums, is not irrelevant. That since employees in East Troy reach their maximums faster than in other municipalities, they receive significantly more money in toto than do their counterparts; indeed that the Village's payout is only $29 below Delavan over a ten year period.

(e) In connection with employee health care deductible amounts, that the Union's argument that the 1989 plan contained a $50 per person and $150 per family is not correct. That the 1989 plan provided for a basic inpatient hospitalization and surgical procedure program, plus a major medical program for costs not covered under the basic plan; that the major medical portion contained a deductible of $50 per person, with a two deduction per family maximum, plus a 20% co-insurance feature on the next $2,000 per person, $5,000 per family of covered charges.

(f) That the 1989 health care plan provided for maximum out of pocket expense for an employee of $450 under a single, and $1,100 under a family plan; that the Village's current proposal for $100 per person and $300 per family, with no co-insurance, is modest in comparison with the 1989 plan.

(g) In considering external comparisons, that the Union ignored the situation with two of its own proposed comparables, Milton and Evansville, which communities have higher

potential out of pocket costs to employees than are proposed by the Village.

(h) Contrary to the arguments of the Union relating to the reallocation increases for the Wastewater Operator/Laboratory Technician and the Water Works Operator/Mechanic classifications, William Joyce is not the Water Works Operator, and is not so classified; and while he possesses a wastewater operator certification, this is not a requirement of his job. Under State Law, one person employed at the East Troy plant needs to possess a Grade III wastewater certification, which certification is possessed by Superintendent Rossmiller.

(i) Contrary to a statement in the Union's brief, that Elkhorn does not have any wastewater operators; further, the Union failed to note that Delavan wastewater operators will receive the same amount of wages for calendar year 1991 as is proposed by the Village in the case at hand.

(j) That Union references in its brief to Fort Atkinson wage rates must be ignored, in that there is no evidence in the record which references any Fort Atkinson rates.

(k) That the Union used a 1991 year end rate in its Delavan Water Works comparisons, but Delavan had a split rate in 1991 which averaged $10.92 per hour, the same 1991 rate proposed by the Village in these proceedings.

(l) Contrary to the Union comparison between the Wastewater Operator and the DPW Mechanic classifications, the latter position is not an unskilled position; to the contrary, the DPW Mechanic classification is a highly skilled position, and it has been contractually recognized as such in the parties' prior agreement.

(m) That there is simply no justification for the Union's demands for a $2.00 per hour increase for the Wastewater Operator, and a $1.85 per hour increase for the Water Works Operator classifications.

(n) In connection with the Union's demand for automatic promotions for three employees, Superintendent Rossmiller did not testify that employees Gerth and Marini were qualified for the position of Equipment Operator; indeed he testified to the contrary.

(o) That there is no evidence in the record to support the Union's claim that tasks such as operating the belt press and the decant pumps were formerly performed by the Water Works Operator Assistant. There is also no evidence in the record relating to the job functions of the Water Operator Assistant Classification, which was eliminated from the 1991-93 agreement.

(p) That while Mr. Marini works with the belt press and the decant pump, he is unable to get the machine going without help from Superintendent Rossmiller; that he is also not able to perform any of the tasks of the Equipment Operator classification.

(q) That there is no evidence in the record relating to former employee Steve Krohn's certification or to the current DPW Mechanic's lack of licenses or certifications; further, that there is no evidence of Mr. Krohn's skill level as compared to the current DPW Mechanic.

(r) That the Union unsuccessfully attempted at the hearing to withdraw from its final offer the demand for three automatic promotions, and it thereafter indicated that it was not going to submit any evidence or testimony in support of this portion of its final offer; that it cannot thereafter introduce new evidence in its post hearing brief.

POSITION OF THE UNION

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

(1) That the areas in dispute in these proceedings fall within three basic areas, longevity, health and welfare, and wages, and consist of the following: the Union's proposal for an increase in the longevity cap from $750 to $1,000 per year; the Union's proposal for annual employee health care deductibles of $50 per person and $150 per family, rather than the Employer proposed $100 per person and $300 per family; the Union proposed wage increases of 19% and 17.6% for the Wastewater Operator/Lab Technician, and the Water Works Operator/Mechanic classifications, versus the Employer proposed 4% increase for these classifications; and the Union proposed reclassifications of John Gerth, Neil Marini and Steve Krohn.

(2) That the Union proposed increase in the longevity cap is supported by arbitral consideration of internal comparables.

(a) That the Arbitrator in these proceedings has previously recognized in another case, that the most important of the statutory arbitral criteria is internal comparables.

(b) That the Union proposed increase to a $1,000 longevity cap is supported by arbitral consideration of comparable Village of East Troy employees. That East Troy's clerical employees are subject to a $1,000 cap, as are police hired before January 1, 1989; further, that while the police dispatch contract currently provides for a $750 cap, it is subject to ongoing contract renewal negotiations.

(c) That the external comparables are less important than the internal comparables, and are "unilluminating" in the dispute at hand. That Delavan's cap of $898 exceeds the Village's proposal, while the Lake Geneva and the Mukwonago caps are less than the $750 proposed by the Village in these proceedings.

(d) That the Village's argument relating to the time required to reach the maximum longevity allowance is immaterial to the Arbitrator's decision, as no proposals were made relative to this matter by either party; in this connection, that the longevity cap simply has nothing whatsoever to do with the number of years required to reach the maximum payout.

(e) Since the Village has made no claim of financial inability to pay, that the Union's proposal to increase the longevity cap to $1,000 is more reasonable, and would place the employees on an even par with the clerical employees and with most policemen.

(3) That the Union proposed employee individual and family deductibles are favored by arbitral consideration of the parties' bargaining history; that the Arbitrator has recognized in prior decisions, the importance of the bargaining history criterion in the final offer selection process.

(a) That the employees have historically paid a $50 per person and $150 per family deductible; during the negotiations leading to the expired agreement, however, the employer proposed a new health insurance provider be substituted, even though there was a lower level of benefits. The Union agreed to accept the lower level of benefits if the Village picked up all of the deductibles, which agreement was implemented during the remainder of the expired agreement.

(b) That the Union proposal for $50/$150 deductibles is consistent with the parties' last negotiated agreement, rather than the higher deductibles now proposed by the Employer.

(c) That the Employer is claiming no inability to pay in the dispute at hand, and that bargaining history considerations should take precedence over consideration of internal comparables.

(d) That arbitral consideration of the external comparison criterion offers no clear pattern relative to deductibles, in that Elkhorn and Jefferson have no deductibles, Mukwonago has a maximum deductible of $100, Lake Mills has the same deductibles proposed by the Village, and Delavan and Lake Geneva have higher deductibles.

(4) That arbitral consideration of various criteria favor the selection of the Union's wage offer which entails increases for the Wastewater Operator/Lab Technician and the Water Works Operator/Mechanic classifications, and the reclassification of three employees to higher classifications.

(a) That Water Works Operator Ottow testified that he holds DNR ground water and distribution certifications, and to acquire the certifications that he was required to have completed a six day training program, to have passed two exams, and to have had two years of on-the-job training; that he is also required to complete 6 credits per year in continuing education, to ensure the renewal of his licenses.

(b) That Water Works Operator Bill Joyce testified that he currently holds a Grade IV license, the highest possible license for water works employees, and that to acquire the license he was required to have passed 25 tests and to have completed three years of on-the-job experience.

(c) That Wastewater Operators in Elkhorn receive $11.03 per hour, and in Mukwonago receive $13.57 per hour; that while Lake Geneva and Lake Mills pay less than the amounts

proposed by the Village, the record, on balance, favors the final wage offer of the Union.

(d) That Water Works Operators receive $13.08 per hour in Elkhorn, $13.26 per hour in Jefferson, $13.28 per hour in Mukwonago, $11.03 in Delavan, and $12.22 per hour in Fort Atkinson; that the only community whose Water Works Operators receive less is Lake Mills, at $10.77 per hour.

(e) That selection of the final wage offer of the Union for the two water works classifications, would still place the two classifications at nearly $1.00 per hour below the external comparables.

(f) That the DPW Mechanic receives $12.31 per hour, but has no certificates or licenses whatsoever; that an anomaly exists in that skilled employees receive significantly less than unskilled employees in East Troy. That the final offer of the Union is consistent with the skills actually required for the respective jobs, and is justified by both external comparisons and by the need to address internal disparities.

(5) That the portion of the Union's wage offer requesting reclassification of employees Gerth, Marini and Krohn, is also supported by the record.

(a) That Article 16 of the expired contract provides that job vacancies be posted and awarded to employees "on the basis of seniority provided the skill and ability of those bidding is reasonably equal based on the results of a practical and written examination." That Mr. Gerth is the most senior employee who would bid for the job, the testing requirements would only be utilized if more than one employee bid, and Mr. Rossmiller conceded that Mr. Gerth is a skilled employee who could perform the duties of the Equipment Operator Classification.

(b) That The Village authorized tuition reimbursement for Mr. Marini if he took courses at a technical college certifying him for waste water work, and he successfully completed these courses; further, that he performs various waste water functions such as operating the belt press and the decant pump, which tasks were formerly performed by the previous Water Works Operator Assistant Classification. That since Mr. Marini has acquired certifications and has performed many of the tasks of a Water Works Assistant, he should be compensated at a higher rate of pay than an unskilled laborer.

(c) That DPW Assistant Mechanic Steve Krohn was an A.S.E. certified mechanic while the current DPW Mechanic had no licenses or certifications whatsoever; that since his skills must be at least equal to those of the current mechanic, he should be reclassified to the same wage rate as the current DPW Mechanic. Since he has left the employment of the Village, that he should be retroactively reimbursed at the higher rate of pay for work previously performed.

(6) In its reply brief, the Union emphasized or reemphasized the following principal points.

(a) Contrary to the position of the Employer, that the Union is still pursuing the reclassification of employees Neil Marina and John Gerth. That the issue of promotion of Steven Krohn was mooted by his termination of employment, and that the change from Assistant Mechanic to Assistant Mechanic Non-Certified was also personal to Mr. Krohn.

(b) That there is precedent from the prior agreement for the listing of employees' names in the agreement, in that employee Darrell Ottow was previously listed under his classification; that with the small number of employees in the bargaining unit, the proposal promotes consistency and ease of reference in the contract. That the Union's exclusion of employee Joyce's name from the agreement was inadvertent.

(c) That the Union's proposal to return to the prior language relating to substitution of providers of health and welfare benefits, is appropriate for the same reasons as its proposal to return to the prior level of medical insurance deductibles. That the Union agreed to the current language only to accommodate the Employer's temporary problems, and there is no evidence that it is shopping for new providers of health insurance, or that it lacks the financial ability to live with the prior language. Accordingly, that the rationale for the current contract language has evaporated, and adherence to the prior negotiations history requires that the original language be restored.

FINDINGS AND CONCLUSIONS

In arguing their respective cases the parties differed relative to various considerations, including the requirement for arbitral consideration of each party's final offer in toto, the composition and significance of the principal intraindustry comparison group, and certain bargaining history considerations, including arbitral treatment of proposed changes in the status quo ante. Each of these considerations will be preliminarily discussed prior to arbitral consideration of the final offers and application of the statutory criteria in detail.

The Final Offers of the Parties

While statutory interest arbitrators in Wisconsin will normally attempt to apply the arbitral criteria in such a way as to place the parties into the same position they would have reached but for their inability to achieve a voluntary settlement, there are significant differences between the give and take of bilateral collective bargaining, versus the statutory interest arbitration process. When parties are at the bargaining table, they may make demands which they do not really expect to become part of the agreement, for the purpose of using such demands in the normal tradeoffs inherent in the face to face bargaining process. In order to encourage the parties to engage in realistic give and take bargaining and to narrow their disputes prior to the initiation of interest arbitration, the Wisconsin legislature has provided for final offer interest arbitration, has specified that neither party could modify its certified final offer during arbitration without the agreement of the other party, and has directed the interest arbitrator to select the final offer, in toto, which most closely meets the statutory arbitral criteria. In this process, a party which has retained elements in its certified final offer which it is unable to justify under the statutory criteria, may be significantly disadvantaged in the final offer selection process, depending also, of course, upon the substance of the other party's final offer.

The fact that the final offer of the Union contains items with which it feels uncomfortable, is reflected in its unsuccessful attempt to modify its final offer during the course of the arbitration hearing; the Employer had the right to reject any unilateral modification of the certified final offer, and it appropriately exercised such right in the case at hand. Accordingly, the Arbitrator is faced with the necessity of selecting all of the elements contained in either the final offer of the Union or the final offer of the Employer, without modification or deletion.

The Composition and Significance of the Primary External Comparison Group

The parties differed relative to which employers should comprise the primary external comparison group, and with respect to the relative weight to be placed upon external versus internal comparisons. The Employer urged that significant weight be placed upon those comparisons with other municipal employers which it urged as comprising the primary external comparison group, while the Union urged that relatively greater weight be placed upon certain internal comparisons with other categories of Village of East Troy employees.

The Wisconsin legislature has not seen fit to prioritize the various arbitral criteria referenced in Section 111.70(4)(cm)(7), but has left to the parties and to various arbitrators, the application of the criteria on a case by case basis. It has been very well established in the interest arbitration process, both in Wisconsin and elsewhere, that the comparison criterion is the most important and the most persuasive of the various criteria, and that the so-called intraindustry comparisons, which have traditionally been emphasized in face to face negotiations, are normally regarded as the most persuasive of the various possible comparisons. These considerations are rather well described in the following excerpts from the authoritative book by Irving Bernstein:

> "Comparisons are preeminent in wage determinations because all parties at interest derive benefit from them. To the worker, they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill. In the presence of internal factionalism or rival unionism, the power of comparison is enhanced. The employer is drawn to them because they assure him that competitors will not gain a wage-cost advantage and that he will be able to recruit in the local labor market. Small firms (and unions) profit administratively by accepting a ready-made solution; they avoid the expenditure of time and money needed for working one out themselves. Arbitrators benefit no less from comparison. They have 'the appeal of precedent and ... awards based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public.'
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> "a. Intraindustry Comparisons. The intraindustry comparison is more commonly cited than any other comparison, or, for that matter, any other criterion. More important, the weight it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards.
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> Wage parity within the industry is so compelling to arbitrators that, absent qualifications dealt with below, they invariably succumb to its force. Its persuasiveness, in fact, provides as sound a basis for predictions as may be uncovered in social affairs. The loyalty of

arbitrators to this criterion at the general level could be documented at length..."[1]

Despite the fact that the terms intraindustry comparison might be termed private sector terminology, the same principles are also normally applied to public sector interest disputes; in the matter at hand, for example, the primary intraindustry comparison group would consist of other similar units of employees employed by comparable governmental units. The importance of intraindustry comparisons in the final offer selection process in Wisconsin has been repeatedly recognized and emphasized by the undersigned in past decisions and awards, including New Richmond School District, Case 25, No. 43374, Int/Arb 5530, which was emphasized by the Union in its post hearing brief.

The conclusion that the so called intraindustry comparisons are normally the most persuasive and most important of the various possible comparisons, does not answer the question of which municipal employers, in addition to the Village of East Troy, should comprise the principal comparison group. In its second, third and fourth exhibits the Union urged a group consisting of public works employees bargaining units located in Hudson, Prescott, Shullsburg, Milton and Evansville, all of which are located within the State of Wisconsin, and all of which have bargaining relationships with local unions of the International Brotherhood of Teamsters. At the arbitration hearing, the Employer urged a principal comparison group consisting of Delavan, Elkhorn, Jefferson, Lake Mills, Lake Geneva, and Mukwonago, all of which are located in Wisconsin and within 33 miles of East Troy. In its post hearing brief it urged exclusion from the principal comparison group, of Union proposed Hudson and Prescott, which are located relatively close to St. Paul, Minnesota and over 250 miles from East Troy, and Shullsburg, which is located near Dubuque, Iowa and over 90 miles away; it expressed agreement, however, with the Union's inclusion of Milton and Evansville, both located in Southeastern, Wisconsin and some 27 and 46 miles, respectively, from East Troy.

There is no evidence in the record indicating the parties' uniform use of any specific intraindustry comparison group in their previous bargaining and, accordingly, it is appropriate for the Arbitrator to determine the makeup of this group. Without unnecessary elaboration, the Arbitrator will merely indicate that he finds no persuasive basis for the inclusion of Hudson, Prescott and Shullsburg in the primary intraindustry comparison group; they are distinguishable from East Troy and the other referenced employers on various grounds, not the least of which is that they are geographically remote, and outside the Southeastern Wisconsin labor market which is common to the other employers. Accordingly, and based on the evidence in the record, the Impartial Arbitrator has preliminarily concluded that the primary intraindustry comparison group in these proceedings should consist of: Delavan, East Troy, Elkhorn, Evansville, Jefferson, Lake Mills, Lake Geneva, Milton and Mukwonago.

Bargaining History/Changes in the Status Quo

As referenced and briefly discussed above, interest arbitrators operate as extensions of the parties' contract negotiations and, as such, they seek to arrive at the same end point in the process that would have been reached if the parties had successfully concluded their face to face bargaining with a renewal agreement. It must be recognized that such contract renewal negotiations do not start from scratch, but rather from the expiring agreement. In the event that one party or the other is faced with a demand for innovative new benefits or language, or for elimination of or significant

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[1] Bernstein, Irving, The Arbitration of Wages, University of California Press, 1954, pp. 54, 56.

changes in previously negotiated language or benefits, the process of give and take bargaining normally ensues; in such bargaining, neither party ordinarily agrees to add or give up significant language or benefits or practices gained in past negotiations, without a so called "quid pro quo" from the other party. When a negotiations impasse results in interest arbitration, the arbitrator will normally avoid altering the status quo by giving either party what they would not normally have been expected to achieve at the bargaining table. These principles are rather well described in the following excerpt from a frequently cited decision by Professor John Flagler:

> "In this contract-making process, the arbitrator must resist any temptation 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 extraordinary pressures which led to the exhaustion or rejection of traditional remedies.
>
> The arbitrator attempts to accomplish this objective by first understanding the nature and character of the past agreements reached in a comparable area of industry and 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 understand what has taken place in the past, but only that he understand the character of established practices and rigorously avoid giving either party that which they could not have secured at the bargaining table.[2]

Stated simply, Wisconsin interest arbitrators normally require the proponent of any significant and meaningful change in the negotiated status quo ante, to make a persuasive case for such change, and also to bear the risk of non-persuasion. The mere failure of one party to present evidence in support of certain elements in its final offer should not, however, automatically foreclose arbitral selection of the offer; it would be inappropriate, for example, to give determinative weight in the final offer selection process to a relatively minor and unimportant element of a final offer, which element had not been independently supported by evidence adduced by its proponent.

With the above preliminary discussion and clarification, it is appropriate to move to detailed consideration of the various disputed elements in the final offers of the parties, which consist of the following: the proposed listing by name of each employee, in the Wage Rate Section of the labor agreement; the retention of the Assistant Mechanic Classification, versus the creation of an Assistant Mechanic Non-Certified Classification; the language in the renewal agreement which would govern changes in health and welfare providers during the term of the renewal agreement; the promotion of Steven Krohn to the DPW Mechanic Classification, and Neil Marini and John Gerth to the Equipment Operator Classification; the employee health insurance deductibles to be in effect during the term of the renewal agreement; and the proposed special increases for the Wastewater Operator/Laboratory Technician and the Water Works Operator/Mechanic classifications. For the purpose of clarity, each of the various impasse areas will be preliminarily addressed by the undersigned prior to the completion of the final offer selection process.

The Listing of Employees by Name in the Renewal Agreement

The Employer is quite correct with respect to the highly unusual nature of this component of the Union's final offer, and relative to the Union's failure to introduce any significant evidence in support of the demand. The Union emphasized that the parties had listed one employee's name in the prior agreement, cited the small size of the bargaining unit, and urged that the

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[2] Des Moines Transit, 38 LA 666, 671

request for individual employee names would merely constitute an administrative convenience.

In examining the record the Arbitrator has preliminarily concluded that the Union has failed to make the requisite persuasive case for its proposed listing of all employees by name in the renewal agreement, which would be a change in the status quo ante, and, technically at least, this would favor the selection of the final offer of the Employer. After carefully examining the entire record, however, the Arbitrator has also concluded that this item would neither substantially benefit nor substantially disadvantage either party. Since the listing of a handful of employees by name in the renewal agreement would not constitute a significant or a meaningful change in the status quo ante, this element of the parties' impasse cannot be assigned determinative or even significant weight in the final offer selection process.

The Introduction of the Assistant Mechanic Non-Certified Classification

In its proposed list of classifications and wage rates the Union urged a new classification entitled Assistant Mechanic Non-Certified, with proposed wage rates for each of the three years of the renewal agreement. The Employer emphasized that the proposed new classification also constituted a change in the status quo, emphasized the lack of any substantial evidence supporting the demand, raised questions with respect to the intended meaning and the prospective application of the new classification, and urged its rejection by the Arbitrator. The Union argued that this element in its final proposal was unique to terminated employee Steven Krohn, and urged that it was mooted by his intervening termination of employment; it submitted, however, that the classification was intended to be applied to Mr. Krohn's replacement if he were classified as a mechanic.

As is discussed above, this is another instance where the proponent has presented little evidence in support of a proposed change in the status quo, and the Employer also raises valid questions relative to how the proposed new classification would be interpreted and applied during the renewal agreement. As emphasized above, the Union, as the proponent of change, has the obligation to establish a persuasive basis for the requested change, and it has failed to do so. While the proposed new classification is certainly not as important as the various economic items in issue, and it cannot be assigned determinative importance in the final offer selection process, arbitral consideration of this item favors the position of the Employer in these proceedings.

The Language Governing Changes in Health and Welfare Providers During the Life of the Renewal Labor Agreement

What next of the Union's proposal to change Article 27, Section 1 to limit the Employer's right to select health and welfare providers to those "with no less than the current level of health and dental benefits," rather than to those "with comparable benefits to the current level of benefits," as was provided in the prior labor agreement? As was the case in the proposal discussed immediately above, the Union has failed to produce significant evidence in support of a change in the status quo. In contrast to the above situation, however, the proposed increased limitation upon the Employer's discretion cannot be termed insignificant or less than meaningful. The Employer is quite correct that its right to change carriers could be significantly reduced if it were faced with a "no less benefits," rather than a "comparable benefits" requirement.

The Union is asking the undersigned to reject the language of Article 27, Section 1 which was mutually adopted by the parties in their previous agreement, and to return to the language of an older agreement. This union proposal has significantly greater importance to both parties than the two

discussed immediately above, and it is understandable why it would be resisted by the Employer. Since there is no substantial evidence in the record to support the Union's demand for change, and no indication of any meaningful quid pro quo, the Arbitrator has preliminarily concluded that the Union has failed to establish the requisite persuasive case for this proposed change in the status quo, and this conclusion clearly favors the position of the Employer in the final offer selection process.

The Union Proposed Promotions of Employees Steven Krohn, Neil Marini and John Gerth

The Union's demand for the promotion of three employees to higher paying classifications has obvious economic implications, but it also raises bargaining history/status quo questions. The parties have agreed in Article 3 that the Employer has the rights to assign work and to determine the number of employees assigned to various operations, in Article 16 that job openings will be filled through the processes and consideration of job posting, job bidding, seniority, skill and ability, and that the Employer retains the right to determine the need to fill job vacancies, and in Article 24 they have provided job descriptions covering the various classifications in the bargaining unit. If the Union request for automatic reclassification of the three employees, one of which is conditional upon the retirement of an incumbent, were granted, it would undermine various of these previously bargained for and agreed upon contract provisions. The significance of the demand is also apparent from arbitral consideration of the fact that it would immediately affect three of the seven bargaining unit employees.

The Union obviously wishes to equitably provide for three promotions on the basis of what it regards as the individual qualifications of the employees. It will be noted that some labor agreements provide for employee rate or classification progression on the basis of individual achievements, qualifications, training or certifications; if it is the Union's intention to seek fixed staffing or manning requirements by classification, however, and/or to modify the parties' apparent practice of classifying and paying by job description and job content, rather than by the personal skills and/or certifications possessed by individual employees, it would be appropriate to directly propose such changes to the Employer when the contract is open for renewal, in which case they could be subjected to the give and take of face to face bargaining between the parties. As discussed earlier in Des Moines Transit, interest arbitrators normally avoid innovation and "plowing new ground" in their decisions and awards, in favor of carrying forward both "the spirit and the framework" of the past agreements of the parties.

On the basis of the above, the Arbitrator has preliminarily concluded that the Union has failed to make a persuasive case for its proposed reclassification of three specific employees to higher paying classifications. Adoption of a final offer which would include the requested reclassifications would undermine the parties' previously negotiated status quo in the referenced contract areas, and would also generate significant additional costs. Accordingly, arbitral consideration of this portion of the final offer of the Union clearly favors the selection of the final offer of the Employer.

The Individual and Family Health Insurance Deductibles Issues

Both parties are in agreement that there will be employee responsibility toward the health insurance policy deductibles beginning January 1, 1992, with the Employer proposing levels of $100 per person and $300 per family, and the Union proposing levels of $50 per person and $150 per family. The Employer relies upon both external and internal comparisons in support of its proposal, while the Union emphasizes negotiations history considerations and submits

that the external comparables do not definitively favor the final offer of either party.

The Union is correct that the last time that the parties agreed upon employee responsibility for health insurance deductibles, the levels were $50 per individual and $150 per family, the same levels proposed by the Union in its final offer in these proceedings, and this consideration would normally favor the final offer of the Union. The Employer points out, however, that the old 1989 insurance plan contained employee responsibility for a $50 deductible and an 80/20% co-insurance provision on the next $2,000 per person and $5,000 per family of covered charges; in terms of employee out-of-pocket costs, submits the Employer, its current proposal is more favorable to employees. On these bases, the Impartial Arbitrator has preliminarily concluded that due to variations in negotiated levels of past coverage, the negotiations history criterion cannot be accorded substantial weight in the final offer selection process in these proceedings.

What next, however, of the evidence and the arguments submitted by the parties relating to intraindustry comparisons?

(1) Employer Exhibits #27 and #28 analyze relative employee out-of-pocket costs for health benefits, within the Employer proposed external comparison group, and indicate in pertinent part as follows: Delavan has $200 single and $400 employee deductibles, which amounts are increasing to $200 and $600 in 1992; Elkhorn and Jefferson have no employee responsibility for deductibles, but the latter provides only HMO coverage for its employees, rather than a standard health insurance plan; Lake Geneva has employee deductibles of $200 single and $400 family; Lake Mills has $100 single and $300 family employee deductibles; and Mukwonago has a single $100 employee deductible for both single and family coverage.

In terms of employee responsibility for single coverage, therefore, the Employer's $100 proposal is equal to or better than four of the six primary comparables, it is poorer than Elkhorn, and it cannot realistically be compared with Jefferson's HMO coverage. In terms of employee responsibility for family coverage, the Employer's $300 proposal is equal to or better than three of the primary comparables, poorer than Elkhorn and Mukwonago, and it cannot realistically be compared to Jefferson.

(2) Union Exhibits #3 and #4 do not, unfortunately, address the matter of employee responsibility for health care deductibles in detail, although Union witness Brendan Kaiser testified that Milton had employee deductibles of $30 single and $90 family. The Employer confirmed that the Teamster's Wisconsin area health plan, which apparently covers both Milton and Evansville, contained employee responsibility for $30 single and $90 family deductibles, but emphasized that it also had a major medical co-insurance feature of $450 per person with a three person per family maximum; accordingly, submitted the Employer, these employees are really responsible for $120 per person and $360 per family, which amounts exceed the employee out-of-pocket costs inherent in its health care deductible proposal in these proceedings.

While each party can generate persuasive arguments based upon employee responsibility for health care costs at Milton and Evansville, the evidentiary record is simply not definitive; accordingly, the Arbitrator has preliminarily concluded that no

substantial weight can be accorded the Evansville and the Milton comparisons in these proceedings.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that arbitral consideration of the practices of the primary intraindustry comparison group, favors selection of the final offer of the Employer relating to employee responsibility for single and family health insurance deductibles.

The Proposed Change in Longevity Pay Maximums

In this area the Union proposes an increase from a $750 maximum longevity payment to a maximum benefit of $1,000; it principally relies upon internal comparisons in support of its demand, and it argues against the relevance of any Employer arguments based upon the relative amounts of time required to reach the maximum longevity benefits, due to the fact that neither party has proposed modification of this item. In urging retention of the existing $750 maximum longevity benefit the Employer principally emphasizes both external and internal comparisons, and it urges arbitral consideration of the time required to reach the maximum benefit in East Troy versus the intraindustry comparables.

In addressing the longevity issue, the Arbitrator will first observe that no appropriate basis exists for disregarding the time required to reach a maximum benefit, in comparing longevity benefits in the bargaining unit with those of comparable groups of employees. In negotiating in the past the parties have addressed both the benefit level and the time required to achieve a maximum benefit, and such determinations always have an impact on one another. To suggest that the Arbitrator should disregard the time required to reach a maximum benefit would comport with neither normal bilateral negotiations, nor normal interest arbitration practices.

In addressing the Employer arguments relating to the practices reflected in the external comparisons, the Arbitrator finds that they clearly and strongly support the Company proposed retention of the $750 maximum longevity benefit. In examining the practices of the eight employers comprising the principal external comparison group, it must be noted that neither Elkhorn, Evansville, Jefferson, Lake Mills, nor Milton provide longevity benefits to their comparable employees, and only Delavan, Lake Geneva and Mukwonago have such a plan. The Employer submits that while Delavan's percentage maximum might exceed East Troy's current $750 cap, Lake Geneva's current maximum is $416, and Mukwonago's is $400; further, it emphasized that it takes 20 years to reach the maximum in Lake Geneva, 15 years in Mukwonago, 10 years in Delavan and only 8 years in East Troy. On these bases the Impartial Arbitrator has preliminarily concluded that arbitral consideration of the primary intraindustry comparisons strongly and clearly supports the Employer proposed retention of a $750 maximum on longevity.

In next looking to internal comparisons, the Police Contract provides for a $1,000 maximum longevity payment for employees hired prior to January 1, 1989, but the maximum benefit has been reduced to $750 for employees hired after the cutoff date, while the Police Dispatch Contract provides for a $750 maximum longevity benefit for all employees. The Clerical bargaining unit is currently in negotiations on its first labor contract; the past practice has been to pay 1% per year of base pay, beginning after three years of service, and with a maximum longevity benefit of $1,000, but the Employer is currently proposing a $750 maximum. While the Union's demand finds greater support among internal, rather than external comparisons, the evidence is mixed, and it cannot realistically be construed as clearly supporting the position of either party on longevity caps. Accordingly, the Impartial Arbitrator has preliminarily concluded that internal comparables cannot be assigned significant weight in the final offer selection process.

The Proposed Special Wage Increases for the Wastewater Operator/ Lab Technician and the Water Works Operator/Mechanics

In this area the Arbitrator is faced and with the Union proposed extra increases in hourly wage rates of $2.00 and $1.85 per hour for the Wastewater Operator/Laboratory Technician and the Water Works Operator Mechanic classifications, respectively, and the Employer position that no special increases are justified for the positions. The Union supported its demand for special increases for the two classifications by citing and relying upon external intraindustry comparisons which, it argued, show significantly higher pay for comparable wastewater and water works classifications, than are paid by East Troy. The Employer also emphasized the intraindustry comparisons, and it urged that the parties' previously negotiated wage relationships between the Village of East Troy and these comparables should not be disrupted in arbitration. Even if a persuasive argument could have been made for catch up increases for the two classifications, urged the Employer, such increases are normally accomplished on a gradual basis, and it argued that there is simply nothing in the record which would justify either an immediate $2.00 per hour, 19% wage increase, or an immediate $1.85 per hour, 17.6% wage increase for the two positions.

An examination of the rates paid by the principal intraindustry comparables indicates that the current and Employer proposed pay levels for the two classifications in question would retain the rankings of the two classifications in the lower one-half of the comparables, and would continue to pay them somewhat below the averages paid by the comparable employers.

(1) In addressing the Wastewater Operator/Lab Technician Classification it will be noted that the 1990 rate of $10.50 per hours was 61 cents per hour below the average rate for the job, and East Troy ranked fourth in a comparison group which also included Mukwonago, Milton, Evansville, Delavan, Lake Mills and Lake Geneva.

Adoption of the Employer's offer would continue East Troy's ranking of fourth for 1991, and would place those the employees holding the classification at 58 cents per hour below the average paid by the comparable employers.

Adoption of the Union's final offer would improve East Troy's ranking to third for 1991, and would place those employees holding the classification at $1.00 per hour above the average paid by the comparable employers.

(2) In next considering the Water Works Operator/Mechanic Classification it will be noted that the 1990 rate of $10.50 per hour was $1.11 per hour below the average rate for the job, and East Troy ranked sixth in a comparison group which also included Evansville, Jefferson, Mukwonago, Elkhorn, Milton, Delavan and Lake Mills.

Adoption of the Employer's offer would continue East Troy's ranking of sixth for 1991, and would place those employees holding the classification at $1.21 below the average paid by the comparable employers.

Adoption of the Union's final offer would improve East Troy's ranking to fifth for 1991, and would place those employees holding the classification at 22 cents per hour above the average paid by the comparable employers.

Clearly the previously negotiated wage rates for the two classifications in question are below average in terms of both rankings and average hourly wages, and the Arbitrator is faced with the need to determine the weight to be placed upon these considerations in the final offer selection process. In the absence of the type of wage uniformity generated by some form of multiple employer bargaining, approximately one half of all employers will be in the lower one half of any rankings, and one half will normally pay at or below the average wage for particular classifications. It must be emphasized, however, that the current rates for the two jobs in question are the product of the parties' past give and take collective bargaining, and reflect many choices and tradeoffs made at the bargaining table. The interrelationship between wage history, including historic negotiated wage differentials, and the principle of wage parity in applying the intraindustry comparison criterion are described in the following additional excerpts from Bernstein's book:

> "The last of the factors is wage history. Judged by the behavior of arbitrators, it is the most significant consideration in administering the intraindustry comparison, since the past wage relationship is commonly used to test the validity of other qualifications. The logic of this position is clear: the ultimate purpose of the arbitrator is to fix wages, not to define the industry, change the method of wage payment, and so on. If he discovers that the parties have historically based wage changes on just this kind of comparison, there is virtually nothing to dissuade him from doing so again. By the same token, if they have not had a wage relationship over time, he is likely to refuse to create one."
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> "This discussion of wage history suggests a final problem in administering the intraindustry comparison, namely, the historic differential. That is, how do arbitrators behave when an established disparity in rates conflicts with the principle of wage parity within the industry? Here the force of the intraindustry comparison is clearly paramount. In the Pacific Gas & Electric case, for example, the Utility Workers argued that the company's 'traditional leadership' should be maintained. Kerr replied:
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> > 'The doctrine of historical relationships runs directly counter to that of standardization. Standardization cannot be achieved by bringing the lower paid up to the higher paid, if the higher paid insist always on being higher paid. If the lower paid were constantly to insist on standardization and the higher paid on historical differentials, the effect would be that of the dog chasing his tail. While standardization seldom occurs at one jump, it seems to be the more widely recognized and constantly effective of the two doctrines. Consequently, the argument that Pacific Gas and Electric should permanently be maintained a given amount above other rates is not accepted as valid.' "[3]

As is apparent from the above, principles of wage parity in connection with application of the intraindustry comparison criterion, may come into conflict with negotiated wage histories, pursuant to which historic wage differentials have been maintained. When faced with such dilemmas, interest arbitrators will normally favor the wage parity principle implicit in applying the intraindustry comparison criterion, but wage standardization is rarely, if ever, immediately achieved. As argued by the Employer in its post hearing briefs, catch up increases which move the parties toward wage parity in the

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[3] The Arbitration of Wages, pp. 66-67. (Included quote from Arbitrator Kerr in Pacific Gas & Electric Company, 7 LA 532)

face of previously negotiated differentials, are normally achieved over an extended period of time.

In applying the above described principles to the dispute at hand, the Arbitrator has preliminarily concluded that while the intraindustry comparison criterion might well favor a catch up component in the wage increases for the two classifications in question, the Union's demand for a $2.00 per hour, 20% increase for one classification, and a $1.85 per hour, 17.6% increase for the other is simply excessive. When the timing and the size of the proposed special wage increases are considered in conjunction with the other elements in the Union's final offer, various of which also carry substantial cost implications, it is apparent that they are excessive, and they simply cannot be justified at this time.

Based upon the considerations discussed above, the Impartial Arbitrator has preliminarily concluded that the Union has failed to make a persuasive case for the large special wage increases proposed by it for the Wastewater Operator/Lab Technician and the Water Works Operator/Mechanic classifications.

Summary of Preliminary Conclusions

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

(1) Interest arbitrators in Wisconsin operate as an extension of the bargaining process, and they normally attempt to put the parties into the same position they would have occupied, but for their inability to reach a voluntary agreement.

(2) Wisconsin final offer interest arbitration is designed to encourage the parties to engage in realistic, give and take bargaining, prior to the initiation of the interest arbitration process; the limitation on either party unilaterally modifying its certified final offer during arbitration, may disadvantage a party which has retained elements in its certified final offer which it is unable to justify.

(3) Comparisons are generally regarded as the most important of the various statutory arbitral criteria, and intraindustry comparisons are normally the most important of the various possible comparisons.

(4) When faced with disputes relative to the makeup of the primary intraindustry comparison group, interest arbitrators will normally look closely at the parties' bargaining history; in the case at hand, however, the parties have not identified a specific primary intraindustry comparison group. Based upon the record, the primary intraindustry comparison group in these proceedings should consist of: Delavan, East Troy, Elkhorn, Evansville, Jefferson, Lake Mills, Lake Geneva, Milton and Mukwonago.

(5) Wisconsin interest arbitrators normally require the proponent of any significant and meaningful change in the negotiated status quo ante, to make a persuasive case for such change, and also to bear the risk of non-persuasion. The mere failure of one party to present evidence in support of certain elements in its final offer should not, however, automatically foreclose arbitral selection of its offer; in this connection, it would be inappropriate to give determinative importance in the final offer selection process to a relatively minor and unimportant element in a final offer.

(6) The Union has failed to make a persuasive case for its proposed listing of all employees by name in the renewal agreement, which would constitute a change in the negotiated status quo ante. After carefully examining the entire record, however, the Arbitrator has preliminarily concluded that this item would not constitute a significant or a meaningful change in the status quo ante and, accordingly, it cannot be assigned determinative weight in these proceedings.

(7) The Union has presented little evidence in support of its proposed introduction of the Assistant Mechanic Non-Certified classification, which would constitute a change in the status quo ante. While the proposed new classification is not as important as various economic items in issue, and it cannot alone be assigned determinative weight in the final offer selection process, arbitral consideration of this impasse item favors the selection of the final offer of the Employer.

(8) In its final offer the Union is asking the Arbitrator to reject the most recently negotiated language of Article 27, Section 1, relating to changes in health and welfare providers during the life of the agreement. Since there is no substantial evidence in the record to support this portion of the Union's final offer, and no indication of any meaningful quid pro quo, the Union has failed to establish the requisite persuasive case for its proposed change in the status quo, which conclusion clearly favors the selection of the final offer of the Employer.

(9) The Union has failed to make a persuasive case for its proposed reclassification of three specific employees to higher paying classifications; adoption of this element of its final offer would undermine the parties' negotiated status quo in various areas of the collective agreement, and would generate significant additional costs. Arbitral consideration of the proposed reclassifications clearly favors the selection of the final offer of the Employer.

(10) The record supports the final offer of the Employer, rather than that of the Union, in the area of employee responsibility for certain individual and family health insurance deductibles; this conclusion is principally based upon arbitral consideration of the practices within the primary intraindustry comparison group.

(11) The record supports the Employer's, rather than the Union's position relative to longevity pay maximums. This conclusion is principally based upon arbitral consideration of the practices within the primary intraindustry comparison group, which strongly and clearly support the position of the Employer.

(12) The Union has failed to make a persuasive case for its large, special wage increase proposed for the Wastewater Operator/Lab Technician and the Water Works Operator/Mechanic classifications; while consideration of the intraindustry comparison criterion might support catch up wage increases for the two classifications, consideration of the final offers in their entirety, and arbitral balancing of wage parity and wage history considerations favor the position of the Employer on this item.

Selection of Final Offer

After a careful review of the entire record, including consideration of all of the statutory criteria, the Impartial Arbitrator has preliminarily concluded, for the various reasons described above, that the final offer of the Employer is the more appropriate of the two final offers.

AWARD

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

(1) The final offer of the Village of East Troy is the more appropriate of the two final offers before the Arbitrator.

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

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

February 13, 1992