ARBITRATION OPINION AND AWARD

In the Matter of Arbitration

Between

VILLAGE OF PULASKI

And

VILLAGE OF PULASKI EMPLOYEES UNION, LOCAL 3055E, AFSCME, AFL-CIO

Case 17
No. 44884
INT/ARB-5837
Dec. No. 26981-A

Impartial Arbitrator

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Hearing Held

December 19, 1991
Pulaski, Wisconsin

Appearances

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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Village of Pulaski and the Village of Pulaski Employees Union, Local 3055E, AFSCME, AFL-CIO, with the matter in dispute the terms of a two year renewal labor agreement covering January 1, 1991 through December 31, 1992. The bargaining unit consists of those employees working in the Department of Public Works, and the parties are in disagreement on the following impasse items: the wages to be paid during the term of the agreement for the four classifications covered by the agreement; the Union's demand for the introduction of longevity pay during the second year of the agreement; the amounts of paid vacation for employees who have completed two, and twenty-three years of service; the maximum amount of sick leave which may be accumulated; and the required levels of contribution to the Wisconsin Retirement Fund during the term of the agreement.

During their preliminary negotiations the parties were unable to reach full agreement, after which the Union on November 30, 1990 filed a petition with the Wisconsin Employment Relation Commission seeking interest arbitration in accordance with the Municipal Employment Relations Act. After preliminary investigation by a member of its staff, the Commission on August 14, 1991 issued certain findings of fact, conclusions of law, certification of the results of investigation, and order requiring arbitration of the impasse; on September 11, 1991 it issued an order appointing the undersigned to hear and decide the matter as arbitrator.

On December 19, 1991 a hearing took place in the Village of Pulaski, Wisconsin, at which time all parties received full opportunities to present evidence and argument in support of their respective positions. Each party thereafter submitted post hearing briefs and reply briefs, after which the record was closed by the undersigned effective March 16, 1992.

THE FINAL OFFERS OF THE PARTIES

The final offers of each party are hereby incorporated by reference into this decision and award. Those elements in the final offers which address the duration of the agreement and the Employer contribution for group medical and hospitalization insurance premiums are identical, and are not in issue. The remaining impasse items consist of wages, Wisconsin Retirement System contributions, longevity, sick leave and vacation benefits.

The Wages Impasse

The four positions covered by the renewal agreement are the Laborer, the Waste Water Treatment Plant/Assistant, the Mechanic, and the Machine Operator classifications.

(1) The Employer's final offer would increases the wages for the Laborer classification from $9.39 per hour to $9.67 on January 1, 1991 and to $9.96 on January 1, 1992; the Union's final offer would provide increases to $9.77 and to $10.21 on the same two dates.

(2) The Employer's final offer would increase the Waste Water Treatment Plant/Assistant and the Mechanic classifications from $10.16 per hour to $10.46 on January 1, 1991 and to $10.77 on January 1, 1992; the Union's final offer would provides increases to $10.57 and to $11.05 on the same two dates.

(3) The Employer's final offer would increase the Machine Operator classification from $10.92 per hour to $11.25 on January 1, 1991

and to $11.59 on January 1, 1992; the Union's final offer would provide increases to $11.36 and to $11.87 on the same two dates.

The Wisconsin Retirement System Impasse

The Village proposes that it contribute 7.2% to the Wisconsin Retirement System in both 1991 and 1992, while the Union proposes Employer contributions of 7.3% in 1991 and 8.5% in 1992.

The Longevity Impasse

The Union proposes a new longevity benefit, effective January 1, 1992, which would add $10.00 per month after eight years of service, $20.00 per month after twelve years of service, and $30.00 per month after sixteen years of service. The Employer proposes no change in this area.

The Sick Leave Impasse

The Union proposes that the maximum accumulation of sick leave be increased from ninety days to one hundred and fourteen days effective January 1, 1991. The Employer proposes no change in this area.

The Vacation Impasse

The Union proposes improvement to two weeks of paid annual vacation after two years of service, and to five weeks of paid annual vacation after twenty-three years of service, effective with employees' 1991 anniversary dates. The Employer proposes no change in this area. (The prior agreement provided for two weeks of paid annual vacation after three years of service, and for a maximum benefit of four weeks of paid annual vacation after seventeen years of service.)

THE ARBITRAL CRITERIA

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs 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 cost 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. 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 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) That the Employer proposed group of primary external comparables is more appropriate than the Union proposed group.

(a) Because the parties have not previously been to interest arbitration, the pool utilized in these proceedings will be used as a basis for future negotiations and arbitration.

(b) That the evidence submitted by the Employer in support of its proposed comparables overwhelmingly supports its position, while the Union has failed to substantiate its proposed comparables.

(c) That the Employer proposed comparables (i.e., Bonduel, Gillett, Oconto, Oconto Falls, Seymour and Pulaski), are geographically proximate and similarly sized communities.

(d) That the Union proposed comparables (i.e., Howard, Ashwaubenon, Pulaski, Allouez, Oconto, Seymour, Shawano, Marinette and Peshtigo), were apparently selected without regard to size, proximity, or other apparent reason; that certain Union exhibits also include Brown County and the City of Green Bay. Due to the failure to substantiate its proposed comparables, the Union's proposed pool is a glaring example of comparability shopping.

(e) That the criteria used by the Employer in selecting its proposed primary comparison pool are those that have been utilized by Wisconsin interest arbitrators in various of their decisions and awards.

(f) That the Village of Pulaski's tax rate is only +.32 above the average of what the other comparables are paying for 1990; that the 1990 taxes paid on a $50,000 home is merely $16.25 above the comparables, approximately 1% above average.

(g) In addressing the geographic proximity criterion, that the Employer looked to similarly sized municipalities located within the northeastern portion of the state, within a range of 35-50 miles of Pulaski.

(h) That the comparability pool selected by the Employer is more appropriate since, in addition to population and geographic proximity, it also considered the full values of property for 1989 and 1990; that the comparable averages are just 2.45% and 3.23% above the Village's full value of property for said years.

(i) That the Employer has properly included both union and non-union represented units of employees in its proposed comparison pool.

(j) That the Union proposed comparison pool evolved from an apparently random selection of municipalities; that it has supported its proposal only through limited population statistics, which show that the Village of Pulaski has a significantly smaller population than those in the Union proposed pool.

(k) In addition to population disparities, that Ashwaubenon, Allouez and Howard are distinguishable from the Village of Pulaski due to the fact that they are suburbs of the City of Green Bay.

In summary, that the Employer proposed primary comparison pool is based upon consideration of populations, tax rates, full values and geographical proximity and, contrary to the Union proposed pool, that it was established in accordance with recognized comparability standards, and it is representative of the labor market.

(2) That the Union's proposals to add a new benefit (longevity pay), and to expand others (paid vacations and paid sick leave), should be rejected. That the Union has simply failed to establish any persuasive bases for its proposed alterations of the status quo.

(a) That the sick leave plan in the old agreement is already in line with the comparables; in this connection, that Bonduel has a maximum of 40 days, while Gillett, Oconto, Oconto Falls, Seymour and Pulaski have 90 days; that the Employer proposes retention of the current sick leave accumulation maximum of 90 days, while the Union proposes an increase to 114 days.

(b) That Pulaski's current vacation schedule meets the comparables, in that Seymour matches the current benefit level in Pulaski with 10 days after 3 years and 20 days after 17 years. Further, that the Union is merely seeking an immediate vacation increase for 75% of the bargaining unit, rather than addressing a recognized problem with a change in the status quo.

(c) That the Union has failed to advance any quid pro quo for its proposed addition of a new longevity benefit, that such a benefit is best worked out at the bargaining table rather than through the arbitration process, and that the proposed addition of longevity benefits is not supported by arbitral consideration of the comparables.

(d) That the Union should be required to establish a compelling need to increase the number of sick leave accumulation days, to increase the number of paid vacation days and/or to add a longevity benefit, but it has failed to do so. To the contrary, that arbitral consideration of comparables indicates that the maintenance of the status quo is justified in the areas of sick leave, vacations and longevity pay.

(3) That arbitral consideration of various criteria, including internal comparisons fails to justify the increased WRS contribution demanded by the Union.

(a) That the Employer currently pays 7% of wages to WRS and has offered to increase it to 7.2% in 1991 and in 1992, while the Union demands Employer contributions of 7.3% in 1991 and 8.5% in 1992.

(b) That when viewed in light of the percentage of WRS contributions made by the Employer, the Village's final offer is clearly favored in these proceedings; in this connection, that the Village is contributing 65.71% and 65.45% in 1991 and 1992 for Police Protective Employees, 64.81% and 63.64% in 1991 and 1992 for other employees, and it would be contributing 66.67% and 65.45% in the two years with the adoption of its final offer. That the Union is demanding, however, that the Employer pay 67.59% and 77.27% in 1991 and 1992, which is not justified by the comparisons.

(c) That the Board on January 1, 1988 improved the retirement benefits of those in the bargaining unit, by joining WRS, a superior program. That in 1990 the program reflected a value of .66 per hour for those making $9.39 per hour, and .76 per hour for those at the $10.02 hourly rate; that the Board is offered .02 or .03 hourly increases in 1992, while the Union is demanding increases totalling .17 to .19 per hour.

(d) That the impact of the pension increase demanded by the Union upon other Village employees, would be formidable; that the 8.5% contribution that would be required for 1992 under the Union's demand, would be 1.5% above what is being received by other Village employees.

(e) That the final pension offer of the Employer is favored by arbitral consideration of private sector comparisons.

(4) That arbitral consideration of the cost-of-living and the overall level of compensation criteria, supports the selection of the District's final wage offer.

(a) That the most valid measurement of cost-of-living for the Pulaski area is offered by the CPI for Urban Wage Earners and Clerical Workers for Nonmetropolitan Urban Areas; that the 4.9% increase in this index from January 1990 to January 1991, compares with 7.5% wage offer and 14.0% total package offer of the Employer for 1991, versus the Union's demand for an 8.1% wage increase and a 16.0% total package increase.

(b) Despite significant past increases in the CPI, evidence in the record shows that those in the bargaining unit have significantly outpaced cost-of-living increases between 1983 and 1991. That the Board's average salary increase of 10.0% and total package increases of 15.16%, over the life of the agreement, are clearly favored by arbitral consideration of the cost-of-living criterion.

(c) That those in the bargaining unit have been further insulated against inflationary pressures by their substantial insurance benefits, and by the Employer paying

90% of the health insurance premiums. That the health insurance premiums paid by the Village between 1983 and 1991, inclusive, increased at nearly double the medical care inflation rate. That the value of the insurance benefits received by employees must be considered in the final offer selection process.

(5) That the Board proposed hourly wage increases are favored when compared with the wages paid by other municipalities.

(a) That average 1991 hourly wage rate for the Mechanic Classification among comparable employers is $10.46, versus a Board offer of $10.46 and the Union offer of $10.57 that the 1992 average for comparables is $10.78, versus the Board's offer of $10.77 and the Union's offer of $11.05.

(b) That the average 1991 hourly wage rate for the Laborer Classification among comparable employers is $10.11, versus a Board offer of $9.67 and the Union demand of $9.77; that the 1992 average for comparables is $10.70, versus the Board's offer of $9.96 and the Union's offer of $10.21.

(c) That the average 1991 hourly wage rate for the Equipment Operator Classification is $10.13, versus a Board offer of $11.25 and the Union's offer of $11.36; that the 1992 average for comparables is $10.35 versus the Board offer of $11.59 and the Union offer of $11.87.

(d) Pursuant to the above, that the Board's offer is right in line with comparables in Mechanics' wages, that Equipment Operators' wages substantially exceed the comparables in both 1991 and 1992, while Laborers' wages are a bit lower in both years.

(e) That the Board offer is also favored when considered in light of total percentage wage increases over the life of the agreement.

(6) That the Board's final offer exceeds the wage increases granted within the Village of Pulaski Police Department.

(a) That the importance of internal comparability cannot be overemphasized in any considered analysis of employee wages and benefits packages, and this consideration has been recognized in the decisions and awards of many other Wisconsin interest arbitrators.

(b) That the negotiated wage increases within the Police Department bargaining unit were 3% in each of 1990, 1991 and 1992; that those in the bargaining unit received 3.5% wage increases in 1990, and will receive either 7.2% and 3.0% in 1991 and 1992 under the Employer's final offer, or 8.3% and 4.5% under the Union's offer.

(7) That the selection of the final offer of the Employer is favored by arbitral consideration of the value of fringe benefits, when added to the wage levels for those in the bargaining unit.

(a) That when the value of employer paid health insurance, retirement, paid holidays, paid sick leave, paid vacations and the Union demanded longevity is considered, the total 1991 hourly compensation for Laborers would be $13.72 (E) or

$14.04 (U), for Wastewater Treatment Plant Assistants and Mechanics would be $14.68 (E) or $15.03 (U), and for Machine Operators would be $15.65 (E) or $16.01 (U); that the 1992 figures for Laborers would be $14.07 (E) or $14.92 (U), for Wastewater Treatment Plant Assistants and Mechanics would be $15.06 (E) or $15.97 (U), and for Machine Operators would be $16.06 (E) or $17.00 (U).

(b) That the record shows that bargaining unit employees are very well compensated in terms not only of wages, but in light of the value of all fringe benefits.

(c) That arbitrators frequently consider the total compensation figures in the final offer selection process, and that arbitral consideration of this criterion in the case at hand favors the selection of the final offer of the Board.

(8) That the interests and welfare of the public can be better served by arbitral selection of the final offer of the Employer.

(a) That the Village has made every effort to provide competitive wages and benefits to its employees, but it must also be concerned with the effect of excessive spending.

(b) That the Village is faced with extreme hardship due to a Stipulation and Consent Decree which orders the Village to engage in the construction of a new municipal wastewater treatment facility at an estimated capital cost of $5,320,000; that this amount must be financed through user fees, possible property assessments, and increased taxes.

(c) That the Village already has a relatively high debt load, which it properly considered in formulating its final offer.

(d) In addition to the above, that the Village faces very significant job losses through layoff, due to the bankruptcy of its major employer, Carver Boat. That the importance of local economic circumstances have frequently been emphasized by Wisconsin interest arbitrators in their decisions and awards.

(e) That the significant job security enjoyed by those in the bargaining unit must be considered by the Arbitrator in the final offer selection process.

(f) That arbitral consideration of the recent drop in the number of farms, the low prices recently received by farmers, and the general "roller coaster" nature of the farm economy, favor the selection of the final offer of the Employer.

(9) The selection of the final offer of the Employer is favored by arbitral consideration of private sector comparisons within the Pulaski area.

(a) That various survey responses by local private sector employers support the position of the Village in this dispute. By way of examples, that only one responding employer offers a longevity benefit, one offers a limited retirement contribution, and local private sector employees contributed up to $250 for 1991 family insurance coverage.

(b) That Village employees will enjoy more generous wages and benefits under the Employer's offer than will the majority of their private sector counterparts, and that this consideration is entitled to arbitral consideration in the final offer selection process.

In conclusion, that the case is not a complex one, and that the parties principally differ only in their respective philosophies. That the Union proposes that the Village must follow a settlement pattern established by communities with significantly different economic situations, while the Employer believes that each municipally must bargain individually with its employees, and that differences in local economic conditions must be considered. That various of the statutory criteria particularly favor the selection of the final offer of the Employer: it is more responsive to local economic conditions and to the interests and welfare of the public; it is internally comparable to the level of settlements attained within the other bargaining unit within the Village and by other Village employees; it addresses the settlements, concessions and overall economic conditions facing private sector employers in the Pulaski community; it more nearly conforms to recent and historic increases in cost-of-living; and that other considerations favoring the Village include the bad news and hardship facing local taxpayers, the fact that the Village did the best it could in providing equitable pay increases, that the Unit as a whole has benefitted tremendously from the creation of two new classifications, and that the Arbitrator should be cognizant of the unusual economic times facing the Village.

In its reply brief, the Village addressed various of the positions advanced by the Union in its initial brief, and emphasized as follows:

(1) That the Employer has not attempted to portray the Village of Pulaski as a farm community; rather, it has emphasized that the condition of the farm economy significantly impacts upon the economy of the Village in a variety of ways.

(2) That the Union's reliance upon a previous arbitration decision involving the Pulaski School District is misplaced, as the decision does not support its arguments on comparability.

(3) That the Union's attempt to soften the Employer's arguments relating to the shutdown and the ultimate scaling down of the Carver Boat Company should be disregarded by the Arbitrator; that the Company is still far below its peak employment levels, that even the recalled employees have not fully recovered from their hardships, and that Carver Boat's reverses have had a significant negative impact upon the economy in the Village of Pulaski.

(4) That while the Employer is not arguing inability to pay, the ability of the taxpayers to pay both increased sewage rates and the costs of the settlement in these proceedings fall within the scope of the interest and welfare of the public and the ability to pay criterion.

(5) That the Union has submitted no arguments as to why longevity pay, and improved vacations and sick leave benefits are needed by those in the bargaining unit.

(a) That the argument that the benefits of the village crew should be identical to those in the police unit is flawed, and it merely reflects an attempt to change the status quo and to move in an upward spiral without a quid pro quo.

(b) That the Union demand for parity in certain benefits areas with the Police, ignores the historical differences between the Police and the DPW units, which have resulted in different benefit levels.

(c) That the nature of police bargaining is different in that it involves a protective service, with different types of standards and hours and benefits.

(d) That different benefits are the result of two separate groups of employees who have bargained two separate labor agreements; that it is unfair for one party to attempt to "cherry pick" the police contract without offering any quid pro quos for the specific improvements sought.

(6) Contrary to the position of the Union, that it is not merely seeking a small increase in Employer WRS contributions.

(a) That those in the DPW bargaining unit in 1990 had 66.6% of their WRS contributions made by the Employer, which is the same as other Village employees, but higher than percentage contribution within the Police bargaining unit.

(b) That the Union's arguments in this area should be contrasted with the fact that it is seeking 4.0% and 4.5% wage increases for 1991 and 1992, in the face of the 3% police wage increases in 1990, 1991 and 1992.

(7) That while the Union has argued for catch-up, it has failed to establish anything more than over-reaching. That it has failed to establish the need for its demands, particularly at a time of economic strain for the Village and its taxpayers, and it has offered nothing in exchange for the proposed benefits increases.

(8) That the Employer has established the reasonableness of its wages and its benefits proposals. Despite adverse economic conditions, it has not demanded a wage freeze or contract concessions, and the employees in the unit will continue to progress with the selection of the Employer's final offer.

THE 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 and evidence.

(1) In addressing the wage impasse, that the Union is proposing 4% and 4.5% increases effective on January 1, 1991 and on January 1, 1992, while the Employer is proposing 3.0% increases effective on each of these dates.

(2) That the Arbitrator should adopt the Union proposed principal external comparison group, consisting of four Brown County Villages, all of which are unionized (i.e., Howard, Ashwaubenon, Pulaski and Allouez), Brown County itself and the City of Green Bay.

(a) That the pattern wage increase for 1991 within the Union proposed group was 4%, and a 4% increase was also adopted by the majority of those in the comparison group for 1992.

(b) That the Employer proposed comparables would completely ignore any Union organized Villages in Brown County, within which the Village of Pulaski is located, in favor of a proposed principal external comparison group consisting of small, unorganized Villages in Shawano and Oconto Counties.

(c) Contrary to certain of the arguments advanced by the County, that Pulaski is not a farm community; to the contrary, there is little farm land in the two square miles within which the Village of Pulaski is located.

(d) That similar attempts by the Pulaski Board of Education to restrictively define the principal external comparison group, were rejected by another arbitrator in an earlier case. Despite the fact that the Pulaski School District covers a more rural area than does the Village, that the prior arbitrator found Ashwaubenon, DePere and West DePere to be more comparable than Seymour, Clintonville and New London; that Ashwaubenon, DePere and West DePere are located in Brown County.

(3) That Employer contentions of hard times for the Village based upon the problems of the Carver Boat Factory should not be fully credited by the Arbitrator; that less than one-half of Carver Boat employees live in the Village, and that recent press releases show recovery and a return to profitability of the Company.

(4) That Employer arguments based upon the need to install a waste water treatment plant should not be accorded determinative weight in the final offer selection process; in this connection, that the Employer is not claiming an inability to pay, but is merely alleging an unwillingness to pay. That the Union's wage demands are supported by the increases in Brown County, in the City of Green Bay, in the Union proposed comparables, and even among the Employer proposed comparables.

(5) That the Union has established a persuasive basis for the introduction of its proposed longevity plan.

(a) That longevity is no stranger to the Village, in that the same proposal advanced by the Union is already in existence in the Pulaski Police agreement.

(b) That years of service are the same for everyone, and that longevity benefits are also quite common in Brown County.

(c) That two of the units agreed upon as comparable by both parties already have longevity (i.e., Seymour and Oconto).

(d) That the Union's longevity proposal is based upon the need to catch-up to both internal and external comparables, and it is timed to be implemented in the second year of the renewal agreement.

(6) That the Union has established a persuasive basis for the introduction of its proposed vacation improvements.

(a) That the Union proposed vacation improvement is supported by the more generous vacation benefit currently available within the police bargaining unit in the Village.

(b) Contrary to the situation in the police bargaining unit, that the Union's offer seeks five weeks of paid vacation after 23, rather than 19 years.

(c) That the vacation proposal of the Union is readily supported by both external and internal comparables.

(7) That the Union has established a persuasive basis for the introduction of its proposed improvement in sick leave.

(a) That the benefit only applies to those who have already reached the maximum of 90 days.

(b) That only three of the Union proposed comparables have less than 100 days of maximum sick leave, and the Pulaski Police labor agreement exceeds everyone.

(8) That the Union is proposing only a very small increase in the Employer's Wisconsin Retirement System contribution, and it has made a persuasive case for the proposal.

(a) That the Village of Pulaski is near the bottom of the Union proposed comparables, and catch-up is needed in this area.

(b) That even with the adoption of the Union's proposal, the Employees would still not have their WRS contribution paid in full; that Brown County, the City of Green Bay, and the villages urged as comparable by the Union, fully pay their employee WRS contributions.

(c) That the Village currently pays 11.5% for police WRS retirement benefits, and this percentage is applied to a much higher hourly rate.

In summary and conclusion, that the final offer of the Union merits arbitral selection for the following basic reasons: the Union proposed comparables are more appropriate based upon size, population and geographic location; its longevity proposal represents catch-up; its vacation, sick leave and WRS proposals are justified by internal and external comparisons; and its proposed wage increases are justified by both cost-of-living considerations and external comparisons.

In its reply brief the Union urged that the Village had failed to candidly and completely clarify its positions relative to the final offer selection process, and it emphasized the following principal arguments.

(1) In connection with its proposed wage increases, that the Employer had tried to conceal the fact that its proposed 3% increase in each of the two years of the renewal agreement was the lowest among the various intraindustry comparables, and that the Union's final offer of a 4.0% increase in 1991 and a 4.5% increase in 1992 was strongly supported by the comparables.

(2) That the Village's claim that the 1991 proposals amounted to a 7.2% cost increase for the Employer's offer and a 8.3% increase for the Union's are flawed, and are inconsistent with the Village's own data furnished in its summary at page vi of its brief.

(a) That the Village figures were apparently developed by including the cost of two employees who were added to the bargaining unit in 1991.

(b) That there is no appropriate basis for adding to the cost of the package, because the bargaining unit accreted two employees not previously in the unit.

(3) That the Village's analysis of cost-of-living considerations is also flawed.

(a) That flawed figures were used by costing-in the accretion of employees into the bargaining unit.

(b) That when considering the cost-of-living criterion, it should be compared to the percentage wage increases and not to the cost of the package; in this connection, that the Union's offer of 4.0% and 4.5% for the two years, better reflects CPI considerations than does the Employer's offer.

(c) That historic cost-of-living data, should be considered only from the last time that the parties went to the bargaining table.

(4) That the Employer proposed comparison pool should be rejected by the Arbitrator.

(a) That the Village proposes a comparison pool of five employers, four of which are located to the north and west of Pulaski, three of which are unorganized, and only one of which is within the Green Bay Labor Market.

(b) That the unorganized comparables urged by the Village should not be used for comparison purposes, that the comparison pool should properly reflect the impact of the Green Bay labor market, and that the relatively small size of the Village of Pulaski should not insulate it from Green Bay area labor market comparisons.

(c) That the labor market for Pulaski consists of the City of Green Bay and Brown County. That the Village's suggested comparison pool, which includes nonrepresented employee groups from outside the local labor market, should be rejected, and the Union proposed comparison pool should be selected by the Arbitrator.

(5) That the Union is seeking catch-up improvements in the areas of sick leave, vacations, longevity and WRS contribution levels, which benefit levels are already represented within the Village of Pulaski. That arbitral consideration of internal comparisons supports the selection of the final offer of the Union.

(6) Contrary to the arguments of the Employer, that the Union is not seeking to add new or innovative language or benefits, but merely to bring the levels of benefits in the bargaining unit closer to the intraindustry standard.

(a) That the Union's proposals in the areas of vacations, longevity, retirement and sick leave, are substantially supported by intraindustry comparisons.

(b) That interest arbitrators in the public sector are normally more receptive to significant change, than are their private sector counterparts.

(7) That the Employer arguments based upon the local economy, and those citing the need for capital improvements within the Village, should not be accorded substantial weight in these proceedings.

(a) That the capital investment in a new wastewater plant would not be financed from the operating budget of the Village.

(b) That certain arguments based on the local economy should not be assigned determinative weight.

(c) Whatever the state of the economy locally, that the DPW employees should not be required to bear the brunt of the local problems; that such treatment would be inconsistent with the treatment of the employees within the Police Department bargaining unit.

(7) That the Employer has used various inconsistent arguments in the presentation of its case.

(a) That the Village wants to use Brown County and the City of Green Bay in its exhibits, but it rejects their use in wage increase comparisons.

(b) That the Employer wishes to ignore unionized Howard, Ashwaubenon and Allouez as comparables, and to include non-unionized Oconto, Oconto Falls, Gillett and Bonduel, the latter of which have no effect on the economy of the Village of Pulaski.

(c) That the Employer urges internal comparables in the area of wage increases, but rejects the same comparables in the area of fringe benefits.

(d) That the Employer shows no comparisons for Wastewater/Water Treatment Employees. That there is no basis for ignoring this classification merely because it is not used in a comparison pool, and that the Arbitrator should consider the wages paid to such employees in the Cities of Marinette, Seymour and Peshtigo.

FINDINGS AND CONCLUSIONS

Prior to applying the statutory criteria, reaching a decision and rendering an award in these proceedings, the Impartial Arbitrator will preliminarily address four areas of consideration which significantly relate to the resolution of the dispute.

(1) The selection of the intraindustry comparisons against which to undertake the requisite comparisons.

(2) The use of internal and private sector comparisons in the final offer selection process.

(3) The degree of proof that is normally necessary to justify the addition of new benefits, the significant enhancement of old benefits, or the introduction of innovative or unusual language or practices.

(4) The state of the local economy, the ability to pay and the interests and welfare of the public criteria.

After the above general matters have been considered, the Impartial Arbitrator will separately address each of the various impasse items.

The Principal Intraindustry Comparisons

The Legislature did not see fit to prioritize the various arbitral criteria spelled out in Section 111.70(4)(cm)(7) of the Wisconsin Statutes and, accordingly, they will be given the same weight that they normally receive in the interest arbitration process generally. Without unnecessary elaboration, it will be noted that the comparison criterion is normally the most important and the most persuasive of the various criteria, and it will also be noted that the so-called intraindustry comparison is normally the most important of the various possible comparisons. These principles are rather well discussed in the following excerpts from the highly respected book by Irving Bernstein:

> "Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the Union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill. In the presence of internal factionalism or rival unionism, the power of comparison is enhanced. The employer is drawn to them because they assure him that competitors will not gain a wage-cost advantage and that he will be able to recruit in the local labor market. Small firms (and unions) profit administratively by accepting a ready-made solution; they avoid the expenditure of time and money needed for working one out themselves. Arbitrators benefit no less from comparisons. They have 'the appeal of precedent and ... awards based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public."
>
> * * * * *
>
> "a. Intraindustry comparisons. The intraindustry comparison is more commonly cited than any other form of 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." [1]

The preeminence of comparisons is also apparent in the following additional excerpts from the frequently cited book by Elkouri and Elkouri:

> "Without question the most extensively used standard in interest arbitration is 'prevailing practice.' This standard is applied, with varying degrees of emphasis, in most interest cases. In a sense, when this standard is applied the result is that disputants indirectly adopt the end results of the successful collective bargaining of other parties similarly situated. The arbitrator is the agent through which the outside bargain is indirectly adopted by the parties." [2]

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

[2] Elkouri, Frank and Edna Asper Elkouri, How Arbitration Works, Bureau of National Affairs, Fourth Edition, 1985. p. 804. (footnotes omitted)

The so-called intra-industry comparison, of course, consists, in the private sector, of comparing otherwise comparable employers within the same industry, with one another. In the public sector, the primary intra-industry comparison is derived from considering comparable units of employees working for comparable employers; school district units are normally compared against comparable school districts, for example, and public works employees are compared against public works employees working for comparable employers. Merely articulating the conclusion that intra-industry comparisons are the most persuasive of the various arbitral criteria does not, of course, resolve the matter of which groups of public sector employers comprise the primary intra-industry comparison group in a particular dispute. In this connection the Union emphasized the Village of Pulaski's presence in Brown County and its geographic proximity to the City of Green Bay and its immediate suburbs, and it urged that the comparable bargaining units within the Villages of Howard, Ashwaubenon, Allouez and Pulaski, in addition to Brown County and the City of Green Bay, should comprise the primary intra-industry comparison group. The Employer, on the other hand, emphasized the relatively small population of the Village of Pulaski, and it urged a primary intra-industry comparison group consisting of the Villages of Bonduel and Pulaski, and the Cities of Gillett, Oconto, Oconto Falls, and Seymour.

Prior to identifying the most appropriate intra-industry comparison group for use in these proceedings, the undersigned offers the following observations relative to various of the arguments advanced by the parties.

(1) Those considerations which identify comparability of employers do not stop at the political boundaries of a county and, accordingly, there is no basis for concluding that the primary comparison group should be exclusively composed of comparable employees working for public sector employers located in Brown County.

(2) There is neither a statutory nor a logical basis for concluding that comparisons should be limited either to units of employees who bargain collectively with their employers, or to units of employees who are unorganized.

(3) There is little or no basis for concluding that the primary intra-industry comparison group in these proceedings should follow the makeup of any primary comparison group used in prior Pulaski School District negotiations or interest arbitrations. The Village of Pulaski and the Pulaski School District are separate employers, the geographical parameters of School District and the Village are quite different, the functions performed by those in the bargaining units are not the same, the labor markets from which the bargaining unit employees are drawn differ, and certain well established practices used in defining educational comparison groups have no application in other interest disputes. Not only is the School District bargaining unit in a different"industry" than the Village's Department of Public Works bargaining unit, but neither the employers nor the employees are otherwise comparable.

(4) No persuasive basis has been established for including either Brown County and/or the City of Green Bay in the primary intra-industry comparison group in these proceedings. Without unnecessarily belaboring the matter, neither Brown County nor the City of Green Bay could be considered sufficiently comparable to the Village of Pulaski, so as to fall within the primary intra-industry comparison group.

The Employer is quite correct that there are significant population differences between the Union's and its proposed group, and that the wages, benefits and practices in the Villages of Allouez, Howard and Ashwaubenon are

significantly more affected by their proximity to the City of Green Bay than the Village proposed comparables. It must be recognized, however, that all of the comparables proposed by the parties are within about a thirty-five to forty mile radius of the Village of Pulaski, which itself is located only approximately fifteen miles from Green Bay. Close proximity to the City of Green Bay and its suburbs is a fact of economic life for the Village of Pulaski, and both are part of the same economic community and the same labor market. The Employer cannot unilaterally elect to avoid comparison with those communities which are part of the immediate Green Bay area by electing to compare itself only with employers that are farther removed from Green Bay and which have wages and benefits structures that differ from those in the Green Bay area.

In considering the arguments of both parties, the Impartial Arbitrator has preliminarily concluded that the primary intra-industry comparison group in the dispute at hand should consist of a combination of the comparables urged by both parties, with the above referenced exclusion of Brown County and the City of Green Bay. This group, therefore, should consist of the Villages of Ashwaubenon, Allouez, Bonduel, Howard and Pulaski, and the Cities of Gillett, Oconto, Oconto Falls and Seymour. At this point it will be noted by the undersigned that application of the intraindustry comparison criterion does not necessitate immediate wages and benefits uniformity within the group, particularly where there are one or more wages and/or benefits leaders; it does normally justify, however, at least a gradual narrowing of the gap(s) between such leaders and the rest of the group.

Internal and Private Sector Comparisons

In addition to the use of intraindustry comparisons, as discussed earlier, both parties urged arbitral consideration of internal comparisons, and the Employer also emphasized certain private sector comparisons in support of its position, and sub-paragraphs (e) and (f) of Section 111.70(4)(cm)(7) of the Wisconsin Statutes direct the Arbitrator to consider such comparisons in the final offer selection process.

In first addressing internal comparisons, it will be noted that the Employer emphasized the size of the wage increases for other Village employees, and the Union cited the existence within the police bargaining unit of a longevity pay plan comparable to that proposed by the Union in these proceedings. Internal comparisons will vary in their importance on a case-to-case basis. If parties have historically based their settlements upon other internal settlements, for example, an arbitrator may place greater weight upon this criterion than upon external comparisons. Internal comparisons may also carry great weight under specific circumstances, in connection with particular types of benefits; an arbitrator would be reluctant, for example, to approve minor changes in coverage or a change in a medical insurance carrier for a small bargaining unit, when the employer had previously had uniformity of coverage and carriers for all employees.

In examining the record, the Impartial Arbitrator has preliminarily concluded, for various reasons, that the internal comparison criterion cannot be assigned determinative weight in these proceedings. First, there is nothing in the record to indicate that the parties have historically placed significant weight upon other internal Village of Pulaski settlements or practices. Second, there are no special circumstances surrounding either the wages or the longevity pay impasse, to suggest to the arbitrator that internal comparisons should be entitled to unusual weight. Finally, it must be noted that neither party has been entirely consistent in its analysis and arguments relating to internal comparisons, with each picking and choosing to suit their individual purposes. The Employer, for example, wishes to compare its final wage offer to the wage increases agreed upon in the police bargaining unit, but it does not wish to adopt a longevity pay plan similar to the one

available to police officers; the Union, on the other hand, wants to be awarded longevity pay in these proceedings, along with pay increases larger than those enjoyed by the police bargaining unit.

In next addressing the Employer proffered evidence relating to certain external private sector comparisons, the Arbitrator will simply note that it is not entitled to significant weight in these proceedings. Not only are such comparisons inherently less persuasive than others, but the limited number of general and anonymous responses in the record, were simply not comprehensive enough to command significant weight.

The Addition of New Benefits, Significant Enhancement of Old Benefits, and/or the Introduction of Innovative or Unusual Language or Practices

In its post-hearing briefs the Employer emphasized the fact that the Union is seeking not only substantial wage increases, but significant enhancement of the preexisting sick leave, vacation, and levels of Employer WRS contributions, and the introduction of a longevity benefit. It emphasized the nature of the interest arbitration process, cited the fact that Wisconsin interest arbitrators have generally required the proponent of significant change in the status quo ante to establish a very persuasive case for the change, and urged that the Union had failed to make a persuasive case for the significant changes contained in its final offer. The Union submitted that the Employer's arguments were more persuasive in a private rather than a public sector context, and it urged that a persuasive case had been made for the selection of its final offer.

The Employer is quite correct that Wisconsin interest neutrals, including the undersigned, have generally assigned a substantial burden of persuasion to the proponent of significant change in the negotiated status quo. In this connection, however, it must also be recognized that there is a significant distinction between private sector interest impasses, where the parties normally have the right to strike or to lock out in support of their bargaining goals, versus public sector impasses, where the parties normally lack such rights. This distinction, and the need for greater arbitral receptivity to change in the public sector has been persuasively addressed as follows by Arbitrator Howard S. Block:

> "...As we know, a principal guideline for resolving interest disputes in the private sector is prevailing industry practice -- a guideline expressed with exceptional clarity by one arbitrator as follows:
>
> > 'The rule of interest arbitration in such a situation must be clearly understood. Arbitration in essence, is a quasi-judicial, not a legislative process. This implies the essentiality of objectivity -- the reliance on a set of tested and established guides.
> >
> > '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.
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> Viewed in the light of the foregoing principles, the public sector neutral, I submit, does not wander in an uncharted field even though he must at time adopt an approach diametrically opposite to that used in the private sector. More often than in the private sector, he must be innovative; he must plow new ground. He cannot function as a lifeless mirror reflecting precollective negotiation practices which management may yearn to perpetuate but which are the target of multitudes of public employees in revolt." [3]

While Arbitrator Block was speaking in the context of arbitral consideration of public sector union demands for change, similar principles also apply to demands for change made by public sector employers. If public sector employers and union are precluded from economic action in support of their demands, and if public sector neutrals were precluded from approving changes or innovations, either party could successfully resist such changes, even where they were desirable or necessary, and/or where the changes had received substantial acceptance by other employers and other unions.

On the basis of the above, the Impartial Arbitrator has concluded that while a persuasive case must be made by the proponent of innovation and/or significant change in the negotiated status quo, public sector interest arbitrators must be more receptive to such change than their private sector counterparts. Decisions must, of course, be made on a case-by-case basis. In this connection it must be noted that the fact that the proponent of change has failed to fully justify an element in its final offer may not preclude selection of its final offer, particularly where the arbitrator is faced with multiple impasse items. The undersigned is faced with the necessity of selecting the final offer of the Employer or the Union, in toto, even where neither final offer is fully supported by consideration of the various arbitral criteria.

The State of the Local Economy, the Ability to Pay, and the Interests and Welfare of the Public Criterion

Questions relating to the financial conditions of both public and private sector employers have been addressed in both private and in public sector interest arbitration proceedings over a period of many years. The subject matter is exceptionally well addressed in the following additional excerpts from Bernstein's book:

"Financial Condition of the Employer

This unorthodox and rather heavy-handed title constitutes an attempt to devise a meaningful phrase to describe what the parties and arbitrators actually deal with in wage cases. The conventional slogan - ability to pay - is deficient on several counts. For one, the employer's typical plea is negative, inability to pay. For the purpose of precision in this discussion this concept is confined to the comparatively rare contention that a wage increase or failure to cut wages would imperil the marginal firm. A second inadequacy of 'ability to pay' is that the usual argument is less extreme than this language suggests on its face. Normally the employer contends that a prospective wage action would be a secondary financial embarrassment. He may

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[3] Block, Howard S., Criteria in Public Sector Interest Disputes, Reprint No. 230, Institute of Industrial Relations, University of California, Los Angeles, California, 1972, pp. 164-165. [Internal quote from Arbitrator Flagler in Des Moines Transit, 38 LA 666.]

note, for example, that stiffening price competition necessitates cost retrenchment without suggesting that failure to cut wages will knock the firm out of business. The term 'financial condition of the employer,' then shall include these three relatively distinct notions: affirmative ability to pay as justification for an increase, inability to pay in the face of a threat to survival, and, most commonly, moderation in wage policy reflecting less than satisfactory business conditions."

* * * * *

"In the face of these management and labor attitudes toward the financial capability criterion, arbitrators have three alternatives: first, to give it decisive weight; second, to ignore it; and, finally, to accord it some but not controlling influence. The problem almost invariably arises in negative form: the employer argues that he cannot pay the proposed increase (or must have a wage cut) and the union counters that his plea should be disregarded. Hence the three options revolve about the matter so framed.

The great majority of arbitrators refuse to grant the employer's impaired financial standing decisive weight..."

* * * * *

"The much more common ruling is that the financial standard is not controlling. 'I can see no justification,' Wasservogel has held, 'for the view that ability to pay is an absolute determinant in wage fixing.'..."

* * * * *

"The second alternative, entirely ignoring this criterion, receives a similar response from arbitrators. The great majority are unwilling to take this extreme position; a small minority dissent..."

* * * * *

"One conclusion arbitrators often reach is that other standards should generate the basic direction of the wage movement but that demonstrable financial hardship should limit the distance that it travels. As Singer as put it, 'On the facts...I find that inability to pay...may not be used as a bar to the granting of a wage increase, but rather as a limitation on the amount to be granted.'..."

* * * * *

"Most arbitrators incline to give more influence to the intraindustry comparison than to financial hardship, provided that both are of roughly equivalent validity. That is, a tight comparison tends to carry greater weight than a clear showing of distress. If one is not substantiated, of course, the other gains relatively in force." [4]

On the basis of the above, it is quite clear that private sector neutrals have been quite reluctant to assign determinative weight to employer claims of financial difficulty, and intraindustry comparisons normally carry much greater weight in the final offer selection process than do claims of financial distress. While Professor Bernstein was principally addressing private, rather than public sector interest arbitration above, the following additional observations of Arbitrator Howard Block address certain of the distinctions between the public and private sector.

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[4] The Arbitration of Wages, pp. 77-78, 80, 82-83. (footnotes omitted)

"...When an employer in private industry argues inability to pay, he implies that if his labor costs are forced above a tolerable level, he will liquidate his holdings and reinvest his capital in another enterprise affording him a more acceptable rate of return. In short, he will go out of business. We have witnessed the same economic forces at work in the past - when federal and state minimum wages were enacted and subsequently raised, large numbers of marginal enterprises closed their doors.

One other example will illustrate why inability to pay is seldom controlling in the private sector. Some 20 years ago there were 175 retail hand bakeries in Long Beach, California, and its environs. Gradually, their number dwindled as these bakeries were forced to the wall by competition from frozen pastries and ready-mixed type of powders sold in the supermarkets. Each year or two the survivors met with the Bakers' Union to renegotiate wages and other cost items. The union's demands were modest, but firm. They remained impervious to the depressed conditions of the industry. As the local union president put it, 'What would be the point of forgoing a wage increase? Next year they won't be any better off, or the year after. We can't keep them in business. They've got to solve that themselves. In the meantime, for as long as the jobs last, we're going to maintain a decent wage.' It is only necessary to add that arbitral findings in the private sector disclose a substantial concurrence with the reasoning expounded by this representative. In the relatively few instances in which inability to pay has been given significant weight, it has usually been relied upon to justify some postponement of wage adjustments called for by the labor market but not to deny them permanently.

Unlike private management, an assertion by government of inability to pay will rarely be a prelude to closing its doors. For government to go out of business is not a very realistic alternative....The point is, operating decisions of the private sector are economic in nature, rooted in the profit motive. Identical decisions in a public enterprise are political; that is economic decision are often dominated by political considerations...." [5]

In applying the above described principles to the dispute at hand it will be noted initially that the Village of Pulaski is <u>not</u> claiming an inability to pay, but is merely arguing economic impairment due to the poor state of the surrounding agricultural economy, the reduced circumstances of its main private sector employer, and the financial impact upon its taxpayers of the DNR mandated construction of an wastewater treatment facility. Under the circumstances, the Village's claims of economic impairment should not be given determinative weight, but rather shall be considered in conjunction with other arbitral criteria. While arguments of economic impairment may be applied in such a manner as to defer or postpone otherwise justified wages or benefits increases, they do not normally operate to defeat such improvements; in the case at hand, however, the Employer has not emphasized arguments based upon deferred impacting of otherwise justified improvements, but has argued that the record simply does not support arbitral adoption of the final offer of the Union.

<u>The Wage Impasse</u>

At this point it will be emphasized that the principal thrust in the interest arbitration of wages is not to reexamine the parties' past wage settlements, but rather to determine what the parties should have agreed upon at the bargaining table, in their failed contract renewal negotiations. The percentage wage increases agreed upon or adopted by comparable parties during

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[5] <u>The Arbitration of Wages</u>, pp. 169-170. (footnotes omitted)

the same time period, are persuasive evidence of what might have or should have been agreed upon by parties. The following comparisons of the percentage wage increases within the principal intra-industry comparison group was extracted from Employer Exhibit 13 and Union Exhibits L, P and R.

Employer	1991 Increase	1992 Increase
Allouez	4.0	NA
Ashwaubenon	NA	NA
Bonduel	3.6	3.4
Gillett	4.0	0 - 3.1
Howard	3.2 - 3.3	4.0 - 4.1
Oconto	3.1 - 1/1 2.0 - 7/1	4.0
Oconto Falls	4.0	4.0
Seymour	per schedule	4.0
Pulaski (U)	4.0	4.5
Pulaski (E)	3.0	3.0

While the above wage increase percentages do not lend themselves to precise measurement in the form in which they have been made available to the Arbitrator, the average first year increase approximates 4.0% the average second year increase is close to 3.8%, and the two year average increases total approximately 7.8%. Even in the absence of exact measurement it is quite apparent that the Union proposed increases of 8.5% over two years are considerably closer to the averages within the primary intra-industry comparison group, than are the Employer proposed increases of 6.0% over two years. By way of dicta, it will be noted that even if arbitral consideration had been limited to the intra-industry comparison pool urged by the Employer, the final offer of the Union would have been favored.

On the basis of the above, the undersigned has preliminarily concluded that arbitral consideration of intra-industry comparisons clearly favors the selection of the wage component of the final offer of the Union.

In next addressing cost-of-living considerations, the Arbitrator will note that the parties differed with respect to the base period to use for cost-of-living consideration, and relative to whether wage increases or employer cost increases should be utilized in addressing cost-of-living.

Interest arbitrators will normally consider and apply the cost-of-living criterion only from a uniform base period, typically the beginning of the parties' last negotiated agreement. This principle and its underlying rationale are very well described in the following additional excerpts from Bernstein's book:

> "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 re-litigation of every preceding arbitration between the parties and a re-examination of every preceding bargain concluded by 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.

> This line of reasoning rests upon the past rather than the prospective behavior of the index, the former being the more common method of calculating a cost-of-living wage change. Where, as occasionally happens, the parties in their last negotiations discounted a future price movement, the expiration date of the prior contract is not appropriate. In this contingency, presumably, the arbitrator would have to make an adjustment for the difference between the estimated and actual performance of the index." [6]

The effective date of the parties' last prior agreement was January 1, 1989, at which time the Consumer Price Index for Urban Wage Earners and Clerical Workers stood at 114.3, after which it subsequently moved to 119.9 (+4.9%) on January 1, 1990, to 125.8 (+4.9%) on January 1, 1991, and to 128.3 (+1.99%) by October 1, 1991. Those in the bargaining unit received wage increases totalling slightly more than 3.5% in each of 1989 and 1990, which means that the wage increases failed to keep pace with recorded movement in the Consumer Price Index. It is a generally accepted principle that the CPI, for a variety of reasons, tends to overstate the impact of cost-of-living increases upon individuals consumers; those in the bargaining unit, for example, have been shielded from certain costs which are included in the market basket of goods and services which is utilized by the BLS in measuring changes in consumer prices, perhaps most notably the medical and hospitalization components of the CPI.

Despite the above referenced overstatement, the undersigned has concluded that arbitral consideration of cost-of-living changes since the parties last went to the bargaining table somewhat favors the selection of the final wage increase offer of the Union, when viewed in isolation from other aspects of the final offers.

The Sick Leave Impasse

In next addressing the sick leave impasse item it will be noted that the parties differ here relative to the maximum days of sick leave accumulation, with the Union proposing an increase to 114 days, and the Employer proposing retention of the previous 90 day maximum. The following comparisons were extracted from Employer Exhibit 24 and Union Exhibit K.

Employer

Allouez	One day per month to a 120 day maximum
Ashwaubenon	One day per month to a 120 day maximum
Bonduel	Ten days per year to a 40 day maximum
Gillett	Five to ten days per year to a 90 day maximum
Howard	One day per month to a 120 day maximum
Oconto	One day per month to a 90 day maximum
Oconto Falls	One day per month to a 90 day maximum
Seymour	One day per month to a 90 day maximum

An examination of the intra-industry comparison group shows that the Village is one of five employers with a maximum accumulation of 90 days of sick leave, and that three employers provide for a maximum accumulation of 120 days. Accordingly, it is clear that the sick leave component of the final offer of the Employer is supported by arbitral consideration of the intra-industry comparison criterion.

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[6] The Arbitration of Wages, pp. 75-76. (footnotes omitted)

The Vacation Benefits Impasse

In this area the parties differed with respect to the length of service required to achieve two years of paid vacation, and relative to the maximum amounts of paid vacation and the lengths of service required to qualify for the maximums. The Union is seeking ten days of paid vacation after two years of service and 25 days of paid vacation after 23 years of service, while the Employer proposes to retain the benefit of ten days of paid vacation after three years, and 20 days of paid vacation after 17 years of service. The following comparisons were extracted from Employer Exhibits 27, 28 and 29, and from Union Exhibit O.

Employer	
Allouez	10 days after 2 years/25 days after 25 years/30 days after 30 years
Ashwaubenon	10 days after 1 year/25 days after 19 years
Bonduel	10 days after 2 years/20 days after 20 years
Gillett	10 days after 2 years/20 days after 15 years
Howard	10 days after 3 years/25 days after 25 years
Oconto	10 days after 2 years/25 days after 20 years
Oconto Falls	10 days after 2 years/25 days after 20 years
Seymour	10 days after 3 years/20 days after 15 years

An examination of the above comparison pool shows that only three of nine principal intraindustry comparables require an employee to wait three years to qualify for ten days of paid vacation, while five provide this benefit after two years and one after one year of service. Five of the comparables provide for maximum vacation benefits of 25 days per year with qualification periods ranging from 19 to 25 years, and four employers provide for maximum vacation benefits of 120 days per year. It is clear, therefore, that an examination of the intraindustry comparables support the final offer of the Union, rather than the Employer, on the vacation benefit impasse item.

Employer WRS or Other Pension Contributions

In next addressing the WRS contribution impasse, it will first be noted that not all employers and employees have joined in the Wisconsin Retirement System and, accordingly, the intraindustry comparisons are not as clear as might otherwise have been the case. The following employer contribution figures have been extracted from Employer Exhibits 31, 36 and 37, and from Union Exhibits J, P and Q.

Employer and Plan	1991	1992
Allouez (WRS)	$68.00 bi-weekly	NC
Ashwaubenon (WRS)	$90.75 bi-weekly	NC
Bonduel (IRA)	6.6% IRA	6.4% IRA
Gillett (Luth. Bro.)	13-14%	13-14%
Howard (WRS)	$70.00 bi-weekly	NC
Oconto (WRS)	12.4%	NC
Oconto Falls (WRS)	6.1%	6.2%
Seymour (WRS)	12.7%	12.9%
Pulaski (WRS) (U)	7.3%	8.5%
Pulaski (E)	7.2%	7.2%

Without individual conversion figures to facilitate direct comparisons of the bi-weekly dollar contributions provided for under the Teamster agreements with the Villages of Allouez, Ashwaubenon and Howard, it is difficult to draw definitive conclusions from the above referenced data. It seems likely, however, that the Allouez and the Howard figures would fall

within the 6% employer contribution range, while the Ashwaubenon figures would be within the 8% range. In examining the comparisons it seems clear that three of the nine have significantly higher levels of employer contribution, one probably has a slightly higher employer contribution level, and four others have at least slightly lower employer contribution levels, than does the Village of Pulaski under either of the final offers. On the basis of the above, the undersigned has preliminarily concluded that arbitral consideration of the intraindustry comparison criterion in connection with the WRS contribution impasse item, fails to definitively favor the final offer of either party.

What, however, of the fact that the Employer is currently providing an 11.5% WRS contribution level within the police bargaining unit. The Wisconsin Statutes clearly provide for arbitral consideration of the wages, hours and conditions of employment of other employees in public employment in the same community, and the relatively high Employer WRS contribution level within the police bargaining unit somewhat favors the WRS component of the Union's final offer in these proceedings. There is no showing that the Police Department and the Department of Public Works employees have ever negotiated in tandem with one another, however, or that either party has previously paid significant attention in DPW bargaining to the police settlements. Accordingly, the internal comparison between the Employer's WRS contribution levels within the Police Department and the DPW bargaining units, is entitled to significantly less weight than the intraindustry comparisons.

The Longevity Pay Impasse Item

What next of the Union's proposal for a longevity pay plan to be provided under the terms of the renewal agreement, versus the Employer's rejection of the proposal? An examination of Employer Exhibits 19-20 and Union Exhibit I, indicates the existence of the following longevity practices within the primary intraindustry comparison group.

Employer	1991	1992
Allouez	None	None
Ashwaubenon	7 yrs./$10 mo. to 15 yrs./$30 per mo.	NC
Bonduel	None	None
Gillett	None	None
Howard	5 yrs./$100 yr. to 15 yrs./$300 yr.	NC
Oconto	5 yrs/$1.62 per mo.	$1.68 per mo.
Oconto Falls	None	None
Seymour	3 yrs./$120 yr. to 20 yrs./$840 per mo.	NC
Pulaski (E)	None	None
Pulaski (U)	8 yrs./$10 per mo. to 16 yrs./$30 per mo.	NC

An examination of the above data shows that five of the comparable employers, including the Village of Pulaski, have no longevity plans, while four have such a plan. Arbitral consideration of the intraindustry comparisons, therefore, fails to establish a persuasive basis for the Union proposed introduction of the new benefit.

What, however, of the Union's reliance upon the fact that the same longevity pay benefit that it is seeking in these proceedings, is already provided within the Police bargaining unit in the Village of Pulaski? The availability of longevity pay within the police bargaining unit supports the Union's demand for longevity pay in these proceedings, but, as referenced

earlier, such internal comparisons are normally entitled to significantly less weight than intraindustry comparisons.

Summary of Preliminary Conclusions

As addressed in greater detail above, the Impartial Arbitrator has reached the following summarized principal preliminary conclusions:

(1) While the Wisconsin Statutes do not prioritize the various arbitral criteria, it is widely recognized that the comparison criterion is the most important, and intraindustry comparisons are the most persuasive of the various possible comparisons.

(2) The primary intraindustry comparison group in the dispute at hand consists of comparable employees working for the following employers: The Villages of Ashwaubenon, Allouez, Bonduel, Howard and Pulaski, and the Cities of Gillett, Oconto, Oconto Falls and Seymour.

(3) Internal Village of Pulaski comparisons cannot be assigned determinative weight in these proceedings; external private sector comparisons cannot be assigned significant weight in these proceedings.

(4) While a persuasive case must be made by the proponent of innovation and/or significant change in the negotiated status quo ante, public sector interest arbitrators must be more receptive to change than their private sector counterparts.

(5) The Village's claims of economic impairment should not be accorded determinative weight in these proceedings, but rather should be considered in conjunction with other arbitral criteria such as comparisons. While arguments of economic impairment may be applied in such a manner as to defer or to postpone otherwise justified wages or benefits increases, they do not normally operate to completely defeat such improvements.

(6) In addressing the wage impasse of the parties, the following preliminary determinations are appropriate.

(a) Arbitral consideration of the intraindustry comparisons clearly favors the selection of the wage component of the final offer of the Union.

(b) Arbitral consideration of the cost of living criterion somewhat favors selection of the wage increase component of the final offer of the Union.

(7) The sick leave component of the final offer of the Employer is supported by arbitral consideration of the intraindustry comparison criterion.

(8) Arbitral examination of the intraindustry comparables clearly supports the vacation benefits component of the final offer of the Union.

(9) Arbitral consideration of the intraindustry comparison criterion in connection with the WRS contribution impasse item, does not definitively favor the final offer of either party.

Arbitral consideration of the 11.5% Employer WRS contribution level within the police bargaining unit somewhat favors selection of the WRS component of the Union's final offer, but internal comparisons are normally entitled to significantly less weight than intraindustry comparisons.

(10) Arbitral consideration of the intraindustry comparison criterion in connection with the payment of longevity pay, has failed to establish a persuasive basis for the Union proposed introduction of this new benefit.

Arbitral consideration of the fact that longevity pay identical to that proposed by the Union in these proceedings is already available to those within the Village of Pulaski's police bargaining unit favors the Union's longevity proposal, but internal comparisons are normally entitled to significantly less weight than intraindustry comparisons.

The Final Offer Selection Process

In the situation at hand, the Arbitrator is faced with five impasse items, and the parties are relatively far apart in their final offers. As concluded above, the wages and the vacation components of the final offer of the Union are clearly favored by the record, the position of the Employer is favored on the sick leave accumulation impasse item, and the position of neither party is definitively favored on either the WRS contribution levels or the longevity pay impasse items.

As referenced earlier, an interest arbitrator operates as an extension of the negotiations process, and he or she normally attempts to put the parties into the same final position they would have occupied but for their inability to reach a full agreement at the bargaining table. Even after having examined and considered the evidence, the arguments of the parties, and the various statutory criteria, however, reaching a final arbitral decision can present significant difficulty. This is particularly true in Wisconsin's final offer interest arbitration procedure, in cases where the arbitrator is faced with multiple impasse items and where neither of the final offers is clearly favored by the record. A major purpose of the final offer limitation upon arbitral authority is to encourage the parties to move as far as possible toward agreement prior to resorting to arbitration. If the system works as designed, the final offer selection can positively or affirmatively put the parties into at least an approximation of the position they would have reached over the bargaining table. Where there are multiple impasse items and the parties are relatively far apart in their final offers, however, the arbitrator may be faced with a negative selection between the two final offers, neither of which reflects the position at which the parties should have concluded their negotiations.

As discussed earlier, the proponent of significant change normally has the obligation to establish a persuasive case for its proposal. In the case of multiple impasse items and a negative selection, however, the failure to fully justify one or more elements in a final offer will not alone be fatal to the selection of the offer; in such case, the arbitrator must evaluate the entirety of the two offers to determine which is the more appropriate. The case at hand involves a negative selection by the Arbitrator.

The selection of the final offer of the Employer would result in lower pay and lower vacation benefits than justified by the application of the statutory arbitral criteria, while the selection of the final offer of the Union would result in appropriate wages and vacation benefits, would increase the maximum sick leave accumulation beyond the level indicated by the statutory criteria, and would increase the Employer's WRS contribution levels

and introduce a longevity pay plan, even though the record is inconclusive on these two items. In addressing these considerations and in determining which of the final offers is more appropriate for selection, the Arbitrator has found the following considerations to be particularly persuasive.

(1) The two impasse items upon which the record clearly favors the Union, its proposed wage increases and vacation improvements, are also the items with the greatest immediate impact and value to employees; in the latter connection, and as emphasized by the Employer, the majority of bargaining unit employees would shortly receive additional paid vacation benefits. By way of contrast, the proposed increase in the maximum amount of paid sick leave accumulation, upon which the record favors the Employer, would apparently have a rather limited immediate impact, in that it would only affect those who have already accumulated 90 days of unused sick leave.

(2) While the record does not definitively favor the position of either party on the matters of the Employer's WRS contribution levels and the introduction of a longevity pay plan, it must be noted that the adoption of these items would not be breaking new ground or setting unusual precedents; to the contrary, there are several intraindustry comparables with such benefits, and the Employer already provides a comparable longevity pay plan and makes a larger retirement contribution within the police bargaining unit in the Village of Pulaski.

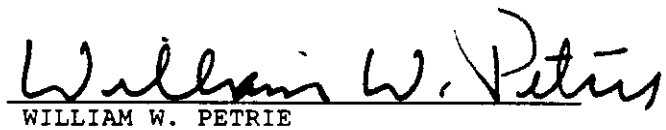
Based upon a careful consideration of the entire record in these proceedings and a review of all of the statutory criteria, the Impartial Arbitrator has preliminarily concluded that the final offer of the Union is the more appropriate of the two final offers.

AWARD

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

(1) The final offer of the Village of Pulaski Employees Union, Local 3055E, AFSCME, AFL-CIO, is the more appropriate of the two final offers before the Arbitrator.

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



WILLIAM W. PETRIE
Impartial Arbitrator

May 14, 1992