

STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

SEP 23 1992  
WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

In the Matter of the  
Petition of:

Case 35 No. 45051 INT/ARB-5882

Decision No. 27176-A

VILLAGE OF EAST TROY

To Initiate Arbitration Between  
Said Petitioner and

Sherwood Malamud  
Arbitrator

TEAMSTERS LOCAL UNION  
NO. 579

**APPEARANCES:**

Davis & Kuelthau, Attorneys at Law, by Roger E. Walsh, 111 E. Kilbourn Avenue, Milwaukee, Wisconsin 53202-3101, appearing on behalf of the Employer.

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by Marianne Goldstein Robbins, 1555 North Rivercenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of the Union.

**ARBITRATION AWARD**

**Jurisdiction of Arbitrator**

On March 11, 1992, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Arbitrator to issue a final and binding award pursuant to Sec. 111.70(4)(cm)6.c., Wis. Stats., with regard to an interest dispute between the Village of East Troy, hereinafter the Village or the Employer, and Teamsters Local Union No. 579, hereinafter the Union. A petition for a public hearing was filed with the Commission and the Arbitrator. Pursuant to said petition, a public hearing in the matter was noticed and scheduled for May 5, 1992. At the appointed time, no member of the public appeared to participate in the Public Hearing. Accordingly, the evidentiary hearing in this matter proceeded on May 5 and 6, 1992, at the East Troy Village Hall. Hearing in the matter was closed as of May 6, 1992, with the exception of certain corrections to exhibits which were submitted post-hearing by the parties. Briefs and reply briefs were received by the Arbitrator by July 16, 1992. Based upon a review of the evidence, testimony, and arguments presented

by the parties, and upon the application of the criteria set forth in Sec. 111.70(4)(cm)7.a.-j., Wis. Stats., to the issues in dispute herein, the Arbitrator renders the following Award.

### **BACKGROUND**

The Village of East Troy is located in southeastern Wisconsin. It has a population of approximately 2300. The unit which is the subject of this interest arbitration proceeding consists of six employees: three full-time and three part-time. This is the initial Collective Bargaining Agreement for this unit. However, the Union represents employees in two other units of this Employer, the employees in the Department of Public Works, and those in the Dispatcher units. An additional unit of four full-time and four part-time police officers is represented by LAW.

Despite the small size of the unit, the parties have managed to create a complex thicket of issues to be determined by the Arbitrator. Both the Union and the Village attempt in these negotiations for an initial agreement to cover each and every possible issue which may arise under a collective bargaining agreement. On one important issue, the parties are in agreement. The term of this initial collective bargaining agreement will be for calendar years 1991, 1992 and 1993.

As might be anticipated, when everything is addressed now rather than permitting the bargaining relationship to evolve, disagreement is the result. The Employer counts 19 separate issues in its summary of the matters in dispute. At the hearing, the Arbitrator suggested, and the parties agreed to this suggestion, that several of the proposals of the parties are sufficiently similar so that they need not be addressed in the briefs and the Arbitrator need not base his decision on the following proposals: 1. the recognition clause; 2. doctor's certificate (Village Exhibit No. 22); 3. comp time; 4. call-in pay; 5. calculation of vacation pay (Village Exhibit No. 25).

#### **The Collective Bargaining Setting**

As noted above, the Teamsters Union represents two other units of employees of the Village. The Union organizational drive in this unit occurred in July 1989. The unit was certified by the Wisconsin Employment Relations Commission (WERC) on September 17, 1990. Initial proposals were exchanged between the parties on November 28, 1990, with negotiations commencing on December 5, 1990. After three face-to-face sessions, the Village requested that the WERC investigate/mediate the dispute. The parties met on eleven occasions with Commissioner Strycker of the WERC over a period commencing on April 16, 1991 through January 17, 1992. By February 25, 1992, the Commission certified the final offers which are the subject of this Award.

During the investigation, specifically, on October 15, 1991, the Village

closed the Police/Emergency Dispatching Center whose employees are represented by the Teamsters. One of the Dispatchers who was a full-time employee in the Dispatcher unit, became the Police Clerk/Court Clerk in this clerical unit. Despite the closing of the Dispatching Center, the parties are in Interest Arbitration for a 1991-92 Collective Bargaining Agreement for the Dispatcher unit. In addition, the Collective Bargaining Agreement for employees in the Department of Public Works unit for calendar years 1991, 1992, and 1993 was determined by an Interest Arbitration award issued by Arbitrator Petrie on February 13, 1992. That interest award and the interest arbitration proceeding in this clerical unit and the one pending in the dispatcher unit are the first interest awards between these parties. LAW, the union representing the four full-time and four part-time police officers, and the Village reached a voluntary agreement for calendar years 1992, 1993, and 1994.

The Arbitrator describes these negotiations at great length to provide the reader with the ability to place the final offers of the parties in context. This is the initial Collective Bargaining Agreement between the parties. Each attempts to set a status quo which is most favorable to their respective positions. Secondly, the closing of the Dispatching Center has an effect in this dispute in that the Union supports its demand for job security language in this small unit, in part, on the basis of the threat it views from the actions of the Village during negotiations.

Third, both the Village and the Union look to the Dispatcher unit as an internal comparable which supports the respective demands of the parties. In this regard, the Union submitted Union Exhibit No. 1, the 1985-87 Collective Bargaining Agreement between the Village and the Union, for the Dispatcher unit. It is the position of the Union that the 1985-87 Agreement is not tainted by the concessions successfully obtained by the Village under the threat of closing the Dispatching Center. The Village, for its part, refers to the 1987-90 Collective Bargaining Agreement which contains the concessions referenced by the Union and which are the conditions of employment which it seeks to replicate, to some extent, in this clerical unit. The successor 1987-90 Agreement contains: no health insurance for part-time employees, longevity at a lower rate, and a wage freeze. During the bargaining for a 1991-92 Agreement, the Village closed the Dispatching Center while the Union demanded the restoration of the concessions and a 17% wage increase. With the close of the Dispatching Center most, but not all, the dispatching work was shifted to Walworth County.

In this interest arbitration proceeding, the Union attempts to obtain benefits and conditions of employment similar to those which existed for Dispatchers in the 1985-87 Agreement, and the Village attempts to replicate the benefit levels present in the 1988-90 Agreement between the parties.

## The Organization of the Award

The parties present different comparables in support of their respective positions. The comparability matter is addressed at the outset of the discussion in this case. The Arbitrator has divided the remaining issues in dispute into several categories. The statutory criteria are applied to each category of issues. The categories are: 1. wages and longevity, and whether a single schedule or two-tier schedule should be implemented in this unit; 2. health insurance benefits, deductible amount, payment for one or two months after layoff, and health insurance for part-time employees; 3. other benefits such as vacation, sick leave, etc. for part-time employees; 4. language for the protection of unit work, and 5. the rights afforded seniority. After the statutory criteria are applied to all the issues, the totality of the final offers are reviewed. The final offer of the Union or the Employer is selected which together with the tentative agreements shall constitute the initial Collective Bargaining Agreement of the parties for calendar years 1991, 1992, and 1993.

The Arbitrator does not set out in a separate section a complete summary of the positions of the parties. The total number of pages in the original and reply briefs of the parties is 128. The Employer presents a final offer which includes a memorandum of understanding governing the wages and benefits of two full-time and one part-time current employees. In addition, the Employer has included an option provision. Under one option, if an employee chooses health insurance, the wage is set at one level. If a full-time employee rejects health insurance coverage, the wage level is considerably higher. In the analysis which follows, the Arbitrator refers to the arguments of the parties where appropriate. It is the hope of the Arbitrator that through this approach, the result will be not only a shorter but a clearer Award.

There are several issues on which the parties differ, but the difference is slight, such as, the calculation of holiday pay and the payment of health insurance after an employee is laid off. The Arbitrator does not discuss these issues separately. These proposals were analyzed by the Arbitrator in the course of selecting the final offer for inclusion in this initial agreement. These items are given little weight in the selection process. For the purpose of brevity, the arbitral analysis on these items is not included in the discussion below.

In the discussion section of this Award, the Arbitrator references only those statutory criteria which serve to distinguish between the final offers of the parties. The failure to refer to a particular statutory criterion is indicative of the fact that the criterion was considered and applied to the appropriate proposal(s) but found to be one which does not serve to distinguish between the offers of the parties.

## STATUTORY CRITERIA

The criteria to be used to resolve this dispute are contained in Sec. 111.70(4)(cm)7, Wis. Stats. Those criteria are:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
- e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
- f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or

otherwise between the parties, in the public service or in private employment.

## **DISCUSSION**

### **Comparables**

In Village of East Troy (Department of Public Works) 2/13/92, Arbitrator Petrie addresses the comparability issue. He concludes that the following communities are comparable to the Village of East Troy: Delavan, Elkhorn, Evansville, Jefferson, Lake Mills, Lake Geneva, Milton, and Mukwonago. The Union suggested the City of Shullsburg as a comparable in the Petrie proceeding. He rejected that comparable. The Union renews the argument that the City of Shullsburg, whose employees are represented by Teamsters Local No. 579, should serve as a comparable to East Troy. This Arbitrator rejects this suggestion, as well. Shullsburg is located in southwestern rather than southeastern Wisconsin. The market conditions for these two regions of the state are different. It is inappropriate for Shullsburg to serve as a comparable to the Village of East Troy.

In this proceeding, the Union suggests Fontana on Lake Geneva as a comparable. East Troy is only slightly larger than Fontana. The employees in Fontana are organized. Fontana lies in the same proximity to East Troy as many of the other comparables identified above. The Arbitrator includes Fontana on Lake Geneva as a comparable to the Village of East Troy. Accordingly, the comparability grouping for the determination of this dispute is as follows: Delavan, Elkhorn, Evansville, Fontana on Lake Geneva, Jefferson, Lake Geneva, Lake Mills, Milton, Mukwonago, and the Town of Beloit. It should be noted that the employees in three of the comparable units, Delavan, Jefferson, and Mukwonago, are not organized. However, neither the Employer nor the Union object to the inclusion of these bargaining units in the comparability pool. On that basis, the Arbitrator provides equal weight to the wage and benefit levels of the employees in the represented and non-represented units.

### **I. WAGES AND LONGEVITY**

#### **Two Tier vs. Single Tier Wage Schedule**

There are several major sub-issues under the wages and longevity heading. Perhaps, the most significant is the proposal of the Village to establish a two-tier wage schedule. In the first tier under the Village's final offer, current full-time employees, Sala and Esche, and part-time employee, Kelling, are to receive increases in the amount of 4% in each of the calendar years 1991, 1992, and 1993. The Village proposes a second tier wage schedule with substantially lower wage rates than the rates to be paid to the above named employees.

The Union proposes a common wage schedule for current and all future employees. It proposes the traditional single wage schedule for inclusion in the initial Agreement.

j. Such other factors . . .

This criterion serves to distinguish between the final offers of the parties. The two-tier wage schedule proposed by the Village is complex. The health insurance option or condition which the Village incorporates into its final offer further complicates the its proposal. The Village attempts to grandfather its current employees and put in place a wage schedule which is premised on the notion that new full-time employees will be afforded the opportunity to participate in the Village's health insurance program with full premium paid by the Village. However, the wage rate shall be fixed over the life of this Agreement for calendar years 1991, 1992, and 1993 at \$9.52<sup>1</sup> per hour for new employees in the Assistant Clerk/Treasurer and Administrative Assistant (DPW) positions. By December 31, 1993, the disparity in wage rates between the two tiers of the schedule is significant. Should the incumbents forego health insurance, \$1.38 is the amount of the disparity between the wage levels of full-time employees Esche and Sala and the TOP rate for any new employee in Assistant Clerk/Administrative Assistant (DPW) classification; it will be \$2.19<sup>2</sup> between the hourly rate of part-time employee Kelling and the TOP rate of her successor or a new employee in the Assistant Clerk/Treasurer classification.

There is a wide disparity between the two tiers of the Village's wage schedule. The Village fails to substantiate the need for such a disparity between the wage rates of the incumbents and the rates paid to new employees in the applicable classifications. The Village does not suggest that its economic stability or its ability to pay dictates its proposal of a two-tier wage schedule. The market and comparability data discussed below do not support the disparity between the two tiers.

The Employer argues that its proposal achieves the equalization of the wage rates of Esche and Sala should they decline to participate in the Village's health insurance program. However, the Village proposal does not achieve such equalization of rates between current employees and any new employees hired during the term of the Agreement. The disparity in rates can only cause discontent among the few employees who comprise this unit.

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<sup>1</sup>The reference to wage rates is to end rates, unless specifically stated otherwise.

<sup>2</sup>The disparity in wage rates is calculated on the basis of the wage proposal of the Employer for these employees plus the 19¢ Health Insurance Reimbursement Amount provided to Esche and the 38¢ per hour Health Insurance Reimbursement Amount provided to Sala. The Health Insurance Reimbursement Amount is described below in further detail.

In its reply brief, the Village argues that it is appropriate to red circle wage rates and fringe benefits where it is necessary to phase in a formalized wage schedule. In this regard, the Village cites the decision of Arbitrator Stern in Monroe School District, 26896-A (11/91).

What the Village fails to take into account is that it proposes a wage schedule which takes it from wage rates which are at or above the average to rates which at the expiration of the Agreement will be at the lowest end of the range of comparability. In fact, the Employer at the higher skilled bookkeeping position may be so far off the mark at \$9.52 that it may find it exceedingly difficult to recruit a new employee at the start rate for that classification which it freezes under its proposal at \$7.52 per hour. The Arbitrator does not believe that the Stern analysis is applicable to the scenario constructed by the Village's final offer.

Under the Employer's offer should Kelling, become a full-time employee during the term of the Agreement and elect to participate in the Employer paid health insurance program, her wage rate would then decline by \$2.19 per hour to \$9.52. The Arbitrator understands that consistency may be one reason for the Village addressing this possibility. Health insurance may cost \$2.59 per hour during calendar year 1992. Under the Village's offer health insurance would not go into effect until after the award is issued. Since the final offers of the parties were first certified at the end of February 1992, it should have been apparent to the Village that its exposure to pay premiums for Kelling's health insurance would be slight during 1992. Even assuming an increase of 15% in health insurance costs for 1993, the penalty assessed against the highest paid employee in the Village in this unit is unexplained. This part of the Village's offer has a substantial negative effect on the evaluation of its final offer in the wage area.

The Union's proposal achieves the equalization of the rates of current and new employees. In the face of the enormous disparity established by the Village's proposal, the Arbitrator concludes that the single tier approach of the Union is to be preferred over the two-tier wage schedule proposed by the Village. The two-tier wage schedule of the Employer weighs heavily against its proposal in the overall evaluation of the final offers of the parties.

### Wages

As a result of the two tier wage schedule with health insurance option proposed by the Village and the Union's proposal to equalize the rates of the three named employees at the very outset of the term of the Agreement, the identification of the common base rate upon which both the Union and Employer increases may be calculated and contrasted requires explanation. The three named employees have not had an increase in their hourly rate of pay since 1989. In 1989, Ruth Kelling, the part-time Clerk Assistant/Treasurer, was paid an hourly rate of \$10.21. Joan Esche received \$9.24. Connie Sala, the Administrative Assistant (DPW) received \$8.83. In



May 1991, the Employer paid each of these three employees a lump sum equal to 3% of their earnings as a pay raise for calendar year 1990. Both the Employer and the Union convert the lump sum into a cents per hour figure and add this hourly figure to the 1989 rate to establish a 1990 base rate upon which the wages for calendar years 1991, 1992, and 1993 are to be calculated. The above computation results in the following 1990 rates for these three employees: Kelling -\$10.52; Esche -\$9.52; and Sala -\$9.09.

The Village and the Union disagree as to which of the three rates are to be identified as the appropriate wage level for the Clerk Assistant/Treasurer/Administrative Assistant (DPW) positions.<sup>3</sup> The Employer identifies the Esche 1990 pay rate as the appropriate wage rate level for the Clerk Assistant position. The rate paid to Ruth Kelling is to be set at a differential of approximately \$1.00 an hour above the Esche rate, under the Employer's wage proposal (excluding the Health Reimbursement Amount, which is described, infra).

The Union identifies the rate paid to Kelling for 1990, \$10.52, as the wage level appropriate to the Clerk Assistant position. The Union proposes that there be no differential among the Clerk Assistants. It proposes that the wage rates paid to Esche and Sala, who are full-time employees, be increased to part time employee Kelling's rate for 1990. On top of that 1990 rate, the Union proposes a 4% increase in each of the years 1991, 1992 and 1993. Accordingly, the Assistant Clerk and Administrative Assistant (DPW) rate effective January 1, 1991, under the Union proposal is \$10.94 per hour. That rate is then increased by 4% effective January 1, 1992, and an additional 4% effective January 1, 1993.

The following chart describes the wage rate base calculated by the parties for the employees in the unit in 1990. As noted above, these employees were not actually paid this hourly rate during the course of calendar year 1990.

[In Chart 1, below, numbers in italics represent the rates proposed by the Union; rates in regular print are those proposed by the Village.]

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<sup>3</sup>The Clerk Assistant, is the position title in the position descriptions placed in evidence; the title is Assistant Clerk in the parties' offers.

Position Classification	1990 Base Rate	1991 Rate	1992 Rate	1993 Rate	<u>Chart 1</u>
Clerk Assistant Part-Time (Kelling)	10.52	10.94 10.90	11.38 11.30	11.84 11.71	
Clerk Assistant Full-Time (Esche)	9.52	10.94 9.90	11.38 10.30	11.84 10.71	
Administrative Assistant (DPW) (Sala)	9.09	10.94 9.09	11.38 10.05	11.84 10.52	
Clerk Assistant Rate New Employees		10.94 9.52	11.38 9.52	11.84 9.52	

d. Comparison of wages . . . these clerical employees . . . to other employees performing similar services

The above description sets out the wage base for the Clerk Assistant and Administrative Assistant positions, as well as, the wage rates proposed both under the two-tier wage schedule of the Employer and the single wage schedule proposal of the Union. The Village and the Union disagree whether it is the rate of Kelling or Esche which is to be the rate of the job for the Clerk Assistant position. The analysis which follows is based upon the testimony of Kelling, Esche, and Sala, who testified at the hearing, and the job descriptions placed in evidence by the Village, Village Exhibits 42, 43, and 44.

Kelling is the Assistant Clerk/Treasurer; a part-time employee but the sole employee in that classification. Kelling's duties include the reconciliation of three accounts. She performs all the billing for the water utility. She conducts a monthly mini-audit of the Village's records. She prepares tax payment batches which are sent to Walworth County. She runs all the month end reports. Since she has been asked to work no more than three days per week, 24 hours per week, work which she is required to perform is completed by her and no one else. Kelling performs higher level accounting, bookkeeping, and computer functions than the other two Clerk Assistants. It is appropriate that there be a differential between Kelling's rate and the rate of the other Clerk Assistants.

Esche, is a full-time employee. She maintains the accounts payable and receivable. She completes purchase orders. She is the employee primarily responsible for interacting with the public at the counter. The job description for her position indicates that the incumbent in that position

must have the ability to work independently, type, and operate the computer. Again, if Esche is not available and some of her work is to be done, it awaits her return to work.

The job description for the Administrative Assistant (DPW) includes the ability to take shorthand and to use transcription equipment. In addition to the requisite typing skills, she is charged with the responsibility of maintaining the records for the Department of Public Works and the Wastewater Treatment Plant. In addition, she staffs two phone lines and one radio. She is the only clerical person at the department and she functions as the principal contact person between the department and suppliers. She contacts suppliers and places orders with them. She handles complaints from the public regarding the service of the department. She schedules appointments of service representatives for matters such as preventive maintenance.

The Clerk Assistant and the Clerk Assistant/Treasurer, as well as the Deputy Clerk and Village Clerk who are out of the unit, all cover the window to assist the public. Other than covering the window, there is no interchange of work between the Assistant Clerk/Treasurer Kelling and Clerk Assistant Esche. Sala works in a different location from the other two. On rare occasions a memorandum may be typed at the Clerk's office if Sala is unavailable or too busy to perform that task.

The Arbitrator agrees with the Village determination to equalize the rates of Esche and Sala and to establish a differential between their rates and that of Kelling's. Esche's rate rather than Kelling's is the rate of the Clerk Assistant position.

The Arbitrator describes the duties of these positions in some detail to demonstrate that there are two distinct clerical classifications in the Village Clerk's office and in the Department of Public Works. It is necessary therefore to contrast the wage rates of each of the two classifications in order to properly apply the comparability criterion.

In its brief, the Village observes that it is very difficult to compare clerical positions among small municipalities. In each municipality the clerical employees perform different functions; they perform at different levels of skill; they are called upon to perform a variety of tasks. After reviewing the compilation of exhibits provided by the parties and the source documents included by the parties in their exhibit packets, the Arbitrator selected positions which reflect a higher degree of responsibility and skill rather than comparing the three above positions to classifications such as a Clerk Typist where the duties appear to require nothing more than typing skills.

The Arbitrator identifies a difference in the pay rates of employees charged with the responsibility of performing various bookkeeping and accounting functions and the rates of employees whose tasks do not include the bookkeeping function but who function at a higher clerical level. It is, in

part, this external comparability evidence which supports the Village's proposal for a wage differential between the wage rate of Kelling, the Assistant Clerk/Treasurer, and the two other incumbent Assistant Clerk Administrative Assistant (DPW) positions.

In its Reply brief, the Village objects to the Union's comparison of the Assistant Clerk/Treasurer position in East Troy with the Deputy Clerk/Treasurer positions in other municipalities. In Lake Geneva, the only rate this Arbitrator could find in the Agreement was at the Deputy Clerk level. However, the Arbitrator has not used the Deputy Clerk/Treasurer position in Elkhorn as a comparable to the Assistant Clerk/Treasurer positions in East Troy. In Lake Mills, there appears a Computer Specialist/Accounting Clerk, as well as, a lower classified bookkeeping position. In order to allow for this disparity, the Arbitrator separately calculates the average rates of the higher rated positions, such as Deputy Clerk or Computer Specialist/Accounting Clerk, and those of the lower rated position titles which appear to describe classifications which require less skill and/or responsibility.

Another position is in dispute. Bourdo is the Police Clerk/Court Clerk, in East Troy. She was formerly a Police Dispatcher, in that unit. Bourdo was included in the clerical unit on October 16, one day after the closing of the Dispatching Center in East Troy. The Court Clerk position is basically a task rate. Both the Village and the Union agree that the task rate for work performed as a Court Clerk is 50¢ above the Police Clerk rate.

The Village hired a part-time Police Clerk to work the second shift in the Police Department. The tasks primarily performed by this part-time employee are clerical in nature. Vensky, the incumbent part-time Police Clerk, types reports and opens files in the Police Department. Bourdo, in addition to performing those tasks, still performs a fair amount of dispatching duties during her day shift and work week of Monday through Friday. She maintains at least one log book for dispatches.

During the hearing, the Village indicated that it had replaced a part-time employee who had left the employ of the Village. This part-time clerical employee in the Department of Public Works was hired to perform a mapping project in the Village. Village Clerk Goll testified that when that project was completed Collum would no longer be employed by the Village. The Union was unaware of Collum's hire. It is clear that no negotiations occurred concerning Collum's rate of pay. Accordingly, the Arbitrator does not separately address Collum's wage rates and conditions of employment in the course of selecting the Village or the Union offer.

In order to compare the proposals of the Village and the Union to the salary levels of comparable Employers, the reader must look at the base rates for 1990 which are described in Chart 1. The complexity of this case is demonstrated by the fact that the Arbitrator is unable to accurately reflect the offers of the parties, whether it be in the base year or during the years covered by the Agreement, through the normal paradigm of Union offer-

Employer offer.

Under the Village offer the base rate for the Clerk Assistant positions at the commencement of the Agreement is \$9.52/hour. This is the end rate to be included in the contract for those positions. This rate is frozen for the duration of the Agreement. In addition, part-time employee Kelling, the Assistant Clerk/Treasurer, would be paid the lower contractual rate of \$9.52 should she become a full-time employee during the term of the Agreement and elect to participate in the Village's health insurance program. The contractual wage schedule which tops out at \$9.52 under the Village's offer is the subject of and it is given the most weight in the analysis which follows.

Chart 2 sets out the data provided to the Arbitrator through summary exhibits, support data, and briefs. The Arbitrator has referred to all three sources of documents in preparing Chart 2. Although there is some discussion as to the propriety of including Fontana on Lake Geneva as a comparable, data on this unit was available only for 1991. Furthermore, the parties focused their argument on the rates for 1992 with little attention to the rates in 1991, or the 1993 rates where there are only two settlements.

Chart 2

	Base 1990 Bookkeeper	Base 1990 Sec'y (Clerk)	Base 1991 Bookkeeper	Base 1991 Sec'y (Clerk)	Base 1992 Bookkeeper	Base 1992 Sec'y (Clerk)	Base 1993 Bookkeeper	Base 1993 Sec'y (Clerk)
Delavan Admin. Office (not organized)			10.54	10.48		11.00		
City Clerk's Office				7.50	11.07	8.50		
Elkhorn (Billing Clerk)				8.54 8.33		8.96 8.74		
Evansville (Utility Office Clerk)			9.28		9.79		10.33	
Fontana on Lake Geneva	9.62 (end rate)		10.01					
Jefferson (not organized)					12.91 9.91	12.11 9.50		
Lake Geneva <sup>a</sup> (Deputy Clerk) Union Exhibit #26				9.68	9.89	8.78	10.29	9.13
Lake Mills (Computer Specialist/ Account ing Clerk)	10.45 9.25	8.94	10.87 9.62	9.30	9.91	9.50		
Milton	10.93	11.14	11.37	11.58	11.82	12.05		
Mukwonago (not organized)					10.55	10.55		
Town of Beloit (Dispatcher/Clerk of Court)						9.51		9.89
Average High			10.41	9.92	10.85	10.31		
Average Low			10.16	9.28	10.42	9.64		

<sup>a</sup>Appendix A (Wage Schedule) from 1990-91 Agreement is missing.

The Union proposes a rate of \$10.94 in 1991 for the Assistant Clerk/Treasurer and Administrative Assistant (DPW) positions compared to the Village's offer of \$9.52. The average high is \$10.41 per hour with the Union's offer 53¢ above that average. The Union's offer is 78¢ above the low average at the bookkeeper or Assistant Clerk/Treasurer position. The Village offer is 89¢ below the average at the "high" calculation of comparables. It is 64¢ below the average of the "low" comparables. The Village's offer is closer to the calculation of the average at the lower range of the comparable positions in comparable communities. The Union's offer for 1991 is closer to the range of higher classified clerical employees in comparable communities at the bookkeeper classification.

At the secretary/clerical position, the same relative position manifests itself. The Village's rate of \$9.52 in 1991 is 40¢ below the higher range of comparable classifications among comparable employers. It is 24¢ above the lower range of comparable classifications among comparable employers. The Union's offer is demonstrably higher than the average at the secretary/clerical rate. Its offer is \$1.02 above the average at the higher classified secretary/clerical positions. The Village's offer is \$1.64 above the average of the comparables at the low end of the classification range among comparable employers. Accordingly, the Village's offer is supported by the comparability data at both the bookkeeper and secretary/clerical positions for 1991. The Union position has some comparability support when the higher classifications in the bookkeeping/accounting positions are used as a basis of comparison. That is the only place where the Union position enjoys support in the initial year of this initial Collective Bargaining Agreement.

In the second and third years of the Agreement, the offers of the parties diverge from the average. The Village's offer which is frozen at \$9.52 falls below the average. The Union's offer which is above the average continues to increase to higher levels above the average. Among the low end comparables, the Village's offer is 90¢ below the average at the bookkeeper classification for 1992. It is \$1.33 below the average when compared to the higher range of comparables. With regard to the secretary/clerical positions, the Village's offer is 12¢ below the average at the lower range of classifications among the comparable employers, and it is 79¢ below the average at the higher end clerical positions.

The Union proposes a rate of \$11.38 for 1992. Its offer is 53¢ above the average at the higher end bookkeeper classifications among comparable employers, and its offer is 96¢ above the average among the lower range of classifications in the bookkeeper/accounting position. At the secretarial position the Union's offer is substantially above the average. It is \$1.07 above the average at the higher range of comparable classifications among comparable employers. The Union's offer is \$1.74 above the lower range of classifications in the secretary/clerical position among comparable employers.

The Union's offer is slightly preferable at the bookkeeper classification whether it be the higher or lower range for calendar year 1992. Although the Union's offer is 96¢ above the average at the lower range of classifications, as contrasted to the Village's 90¢ below the average, the disparity at the higher end is much greater at the Village's offer. Accordingly, the Union's offer is preferable at this classification for the second year of the Agreement.

At the secretarial level, the Village's offer, when compared to the high or the lower range of comparables, is much closer to the average than the Union's proposal. Accordingly, at the secretary/clerical position, the Village's offer is supported by the comparability data.

If a 3% or 4% increase is assumed for comparable Employers, in all likelihood the disparity would increase in 1993, since the Village freezes the end rate for the Clerk Assistant and Administrative Assistant positions. Nonetheless, the Village's offer would be preferred at the secretary/clerical position, as a result of the Union's decision to peg the rate of the job to Kelling's rather than Esche's rate. The Union's offer would more closely approximate the average at the accounting/bookkeeping classifications.

The Union's selection of Kelling's rate as the rate of the job is undermined by the comparability data. There is simply no support for that decision. Consequently, at the secretary/clerical position the Union's offer enjoys no support even in the third year of the Agreement against a Village offer which is frozen over three years.

The devastating effect of the Employer's proposal to its salary schedule can be seen when the \$9.52 rate is contrasted with the grandfathered rate Kelling, Esche, and Sala would receive if they elect to refrain from participating in the Village's health insurance program. Kelling, who under the Village's offer as a part-time employee is not eligible for health insurance and under her present status would not be affected by the health insurance proviso, her rate is \$2.19 above the top rate of a successor employee in her position. Similarly, with the health insurance reimbursement amount factored in on an hourly basis, although the Employer does not propose that roll-in in its final offer, the \$10.90 rate for Esche and Sala is \$1.38 above the top rate of a new employee in that position. The Employer offer, inclusive of the Health Insurance Reimbursement Amount, is slightly above average at the bookkeeper classification, in the higher range of classification titles among comparable employers. The Village's offer is below the average, without the Health Insurance Reimbursement Amount included in the hourly rate.

The grandfathered rates proposed by the Village (inclusive of the Health Insurance Reimbursement Amount rolled into the rate) are preferable to the rates proposed under the Union's offer which are either at

or well above the average rate paid to employees in the bookkeeper or secretary/clerical classifications among comparable employers.

Conclusion- Comparability Criterion Clerk Assistant/Treasurer & Administrative Assistant Positions

The above comparability data support the inclusion of the Village's offer in the initial Agreement. For the most part the Union offer generates wage rates which are well above the average of the comparables.

Police Clerk Rate- Comparability

The comparability data for this classification is sparse. 1991 is the only year in which there is data from five comparable employers. In 1992 there is data from only four. The data supports the Union's proposal. The average rate for 1991 for a Police Clerk is \$8.90. The Union offer is 26¢ per hour above the average. The Village's offer is \$1.09 below the average.

The Employer argues that the Union position represents a large increase for the incumbent Bourdo and the part-time employee, Venski. Bourdo was formerly employed as a Police Dispatcher until that unit was closed. When Bourdo assumed the duties and responsibilities of the Police Clerk position, she obtained a new position. That new position happens to be with this Employer. The average rate of pay for the position among comparable employers in 1991 is \$8.90 per hour. Bourdo's rate is grandfathered under the Village offer. Her rate, should she elect to refrain from participating in the Village's health insurance program, would be \$8.19 in 1991, \$8.69 in 1992, and \$9.00 in 1993. It must be apparent that even the grandfathered rate which Bourdo would be paid under the Memorandum of Agreement, which is a part of the Employer's offer, is well below the average rate paid by comparable employers for the Police Clerk position. In fact, only Lake Geneva at \$7.21 for the Police Clerk position in 1991 is below the rate proposed by the Village. The Union offer at the Police Clerk classification is supported by the comparability criterion.

g. Cost of Living

The cost of living criterion is a fair measure of the size an annual increase in the wage rate proposed by each side. It is noteworthy that once the base rate is established, the rate of increase proposed by the Village and the Union is equal to the rate of increase provided by comparable employers. The Union proposes a 4% increase over the three year term of this Agreement. The increase at the bookkeeper position from 1991 to 1992 and at the secretary/clerical position from 1991 to 1992, whether one selects the high or the low average, is 4%. The Village proposes an increase of approximately 4% for the incumbents should they elect to refrain from participating in the Village's health insurance program. Since both the Union and the Employer propose increases which closely approximate 4%



per year, the cost of living does not serve to distinguish between the offers of the parties.

#### h. Overall Compensation Wages

The Employer's proposal suffers from the health insurance "option" found in its offer. The Arbitrator recognizes that in the context of this bargain the Employer will pay the full amount of the health insurance premium. Nonetheless, the Employer's wage rate schedule for new employees is configured upon the assumption that new employees will participate in the Village's health insurance program. There is no evidence to support that assumption. The evidence suggests that the incumbents are covered under a spouse's plan. New employees may be covered under a spouse's plan, as well.

In this Arbitrator's opinion the Village's offer suffers from the non-provision of health insurance to its full-time employees and a wage rate schedule that is below average. To the extent that the Employer's offer is acceptable at all is the direct result of the Union's identification of Kelling's wage rate as the appropriate rate for the Assistant Clerk/Treasurer positions. In applying this criterion, the Arbitrator finds that the Employer would have done better to refrain from offering any health insurance to any employee but propose a wage schedule which is in line with the wage rates that it currently pays the incumbents in the positions in question.

The Union proposal suffers from its attempt to provide all in the first year. Nonetheless, its offer is preferred in the face of the Village's "option" proposal for health insurance.

On the basis of the above discussion, the Arbitrator finds that this criterion supports the selection of the Village proposal.

#### Conclusion-Wages

The Union's proposal for a single rather than a two-tier wage schedule provides strong support to the Union's position. The comparability criterion at the Clerk Assistant and Administrative Assistant (DPW) classifications support the Village offer. The comparability criterion at the Police Clerk rate supports the inclusion of the Union offer. The overall compensation supports the Village offer. On balance, the Union offer enjoys a slight preference on the Wages issue over the Village proposal.

#### Longevity Schedule and Maximum

The Union proposes to continue in effect the current longevity schedule. Its proposal is consistent with the manner in which the Village pays longevity to its current employees. The Union proposes the payment of

1% of an employee's wage rate after three years of service up to 6% after eight years of service and continuing thereafter at the 6% rate.

The Village proposes a two-tier program. For employees hired prior to January 1, 1988, it proposes to continue the present 8 year term to reach the 6% longevity rate. For those hired after January 1, 1988, it proposes a schedule that begins at a 0.5% after three years of service and proceeds to 6% after fourteen years of service.

**d. Comparability - the clerical employees of East Troy longevity rate as contrasted to similar employees of comparable employers**

Among the comparable communities of Elkhorn, Fontana, Lake Geneva, and Town of Beloit, none of these comparables have a longevity program as generous as that proposed by the Village for employees hired after January 1, 1988. Certainly, its proposals for employees hired prior to January of 1988 is far in excess of the longevity amounts paid by comparable employers.

Similarly, as a practical matter, the maximum proposed by the Village may be achieved a lot sooner by employees under either schedule whether it be for those hired after January 1, 1988 or before. The maximums which are achieved at comparable employers at a level above that of East Troy, can only be achieved after 20+ years. For example, under the Lake Geneva longevity program it would take 30 years to reach \$624. Whereas, in East Troy, an employee with 15 years of service at a \$10 hourly rate would be paid \$625 in longevity. An employee with 20 years of service at that rate would be paid \$833 per year. Through its grandfathering, the incumbents would not hit the maximum which is \$1,000 for employees hired prior to January 1, 1988.

With regard to the longevity schedule, the Village's proposal for the 6% maximum longevity payment to be achieved in 14 years for employees who are hired after January 1, 1988, is more generous than the longevity systems in effect among comparable employers. This comparability criterion supports the Village offer.

**h. Overall Compensation**

The Union's proposal is to be preferred under this criterion because of the frozen wage rates proposed by the Village for the three year term of the Agreement. The accelerated rate with which an employee reaches the 6% maximum in small part offsets the low wage rate relative to comparable employers that this Employer will have in place as its contract rate for new hires. The Union proposal, therefore, is supported by this criterion.

**j. Such Other Factors -The Internal Comparables**

Under the Union proposal the incumbents continue to be paid under the present longevity schedule. The Employer presently pays longevity under a schedule in which incumbents reach the 6% rate after 8 years.

The Employer proposal delays reaching the maximum until 14 years of service. This is a longer period than it proposed for the DPW unit which reaches the maximum after 10 years. The Police Dispatcher unit reached a maximum after 10 years for employees hired prior to January 1, 1988. For those hired after January 1, 1988, the Village has in place a longevity program which reaches the 6% rate after 14 years. The Village has reached agreement with the police unit on a longevity schedule for employees hired prior to January 1, 1989, and those hired subsequent to that date.

This criterion supports the selection of the Village's offer.

### Summary and Conclusion Wages & Longevity and Maximum

The Arbitrator finds that the Union's proposal is based upon a false assumption that the appropriate rate for Clerk Assistants is the rate paid to Kelling in 1989 and 1990. As a result the Union's offer produces a large increase in calendar year 1991 amounting to approximately 17-20% for the current employees of the Village. Nonetheless, the Village's two-tier wage proposal with a frozen contractual wage schedule for the life of the Agreement may well have a devastating effect on the Village's ability to compete in the marketplace for future employees. The wage rate it proposes of \$9.52 for the Assistant Clerk/Treasurer position would place it over \$2.00 an hour below the average at the conclusion of the term of this Agreement in 1993. Any new hire, at the Village's start rate of \$7.52 would be so far below the wage rate paid to other employees that it would be difficult to equalize those rates over time.

The Village's proposal to place Kelling at a \$9.52 rate should she become a full-time employee and elect to participate in the Village's health insurance program is punitive. When the Village's longevity and wage proposals are viewed together, the higher longevity schedule does not offset a wage proposal which is harmful to the Village's own interests. Despite the unreasonable size of the increase proposed by the Union, the Village's wage structure which it proposes to put in place for new employees and the punitive manner in which it presents its health insurance proposal provide the basis for selection of the Union's proposal as less draconian than the offer of the Village. Accordingly, the Arbitrator finds that the Union proposal on wages and longevity is to be preferred.

## II. HEALTH INSURANCE

In this Agreement, the Union proposes a new benefit; health insurance benefits for full-time and regular part-time employees. The Village offers health insurance to incumbents, however, if they take health

insurance their wage rates are reduced for the period in which they participate in the Village's health insurance program.

### **Health Insurance for Full-time Employees**

#### **a Lawful Authority of Municipal Employer**

The Employer argues that the language of the Union's proposal on health insurance is illegal under a recent Wisconsin Appellate Court decision, Braatz v. Labor and Industry Review Comm., 483 NW 2d 246. The language of the Union proposal in question is as follows:

The Employer shall not be required to provide duplicate coverage for employee's whose spouses are participating in the same plan or another plan equal or of greater coverage.

The appellate court decision was issued on March 10, 1992, subsequent to the certification of final offers by the Wisconsin Employment Relations Commission. Accordingly, it is appropriate for the Arbitrator to consider this opinion. This appellate court would find the Union proposal in violation of the statutory prohibition against employment discrimination on the basis of marital status, section 111.321 and 111.322(1) of Wis. Stats. The Union points out that the tentative agreements include a severability clause. Should the Arbitrator select the Union proposal for inclusion in the initial Agreement, the parties can sit down and remove the illegal language from the Agreement.

The Arbitrator finds that this criterion provides substantial support for the selection of the Employer's final offer. Even with a severability clause, the introduction of illegal proposals in an initial agreement should be avoided.

#### **c. The Interest and Welfare of the Public**

Neither the Employer nor the Union present any argument relative to this criterion. However, this Arbitrator provides substantial weight to this criterion. Health insurance is the most important fringe benefit which an employer may provide to its employees. In the event of illness or accident, health insurance benefits provide the employee with the financial ability to obtain appropriate medical care, and it provides the financial stability for the employee to continue her/his employment in the face of large medical bills. If a public employer fails to provide health insurance to its employees, then the larger community, the county or the state, will provide that coverage through various programs which are subsidized by taxpayers. Alternatively, another member of the employee's family must provide the insurance protection. Certainly, long ago the Employer should have provided this benefit to its full-time employees. In essence, this is a situation in which

the Employer has been able to escape the enormous cost associated with health insurance for its full-time employees. Accordingly, the cost associated with the provision of this new benefit is attenuated by the fact that health insurance coverage is such an important fringe benefit which an employer in 1992 should be affording its employees.

In the past, the Employer has provided some modicum of coverage to its employees by providing employees Esche and Sala with a Health Insurance Reimbursement Amount to offset the increased cost of including a Village employee on a spouse's health insurance policy. This reimbursement amount is a small offset against the cost of implementing a health insurance program for full-time employees.

Accordingly, the Union proposal to provide health insurance benefits to full-time employees and at the Employer's cost is supported by this criterion.

d. Comparability

With regard to health insurance for full-time employees there are no comparables which support the Village proposal to provide/not provide health insurance to its employees. Health insurance is provided as a fringe benefit for full-time employees by all the comparables. There is no dispute in this case as to contribution towards premium. Both the Village and the Union propose that the Village pay the full amount of the premium.

The Union proposal for health insurance for full-time employees receives added weight from this criterion.

j. Such Other Factors - Internal Comparables

It is here that the Village and the Union look to the prior agreements which were in effect in the Dispatcher unit. The Union looks to the 1985-87 Agreement in support of its position. Full-time employees as defined under the formula proposed by the Union, i.e., those who are employed for 30 days or more and work an average of 32 hours per week, received health insurance. The Employer points to the expired 1988-1990 Agreement and notes that health insurance is not provided to full-time employees under that Agreement.

Full-time employees in the Department of Public Works and the professional police association are provided with health insurance coverage without suffering draconian reductions in their wage rate.

The statutory criteria support the Union's offer for the provision of health insurance to full-time employees without any wage reduction.

The Village argues that the Union's offer on health insurance is retroactive to January 1, 1991. The Arbitrator disagrees. The Union proposal speaks of the availability of health insurance to employees. That insurance will not become available until the issuance of this Award. Consequently, the Arbitrator concludes that the Union proposal for health insurance without a major wage offset for full-time Village employees is to be preferred over the final offer of the Village on this subject.

### Health Insurance for Part-time Employees

The Union proposes the inclusion of this new benefit for part-time employees. The Union defines part-time employees as those who work an average of less than 32 hours per week. The Union does not propose a minimum number of hours for a part-time employee to work to become eligible for this benefit. The Union proposes that the part-time employees pay a pro-rata share of the cost of the health insurance premium.

The Village proposes that part-time employees not be permitted to participate in the Village's health insurance program.

#### a. Lawful Authority of Municipal Employer

The analysis under this criterion for health insurance benefits for full-time employees is applicable to part-time employees, as well. The illegality of the Union's proposal provides strong support to the Employer's proposal to refrain from providing this benefit to part-time employees.

#### c. The Interest and Welfare of the Public

Certainly, the views of the Arbitrator expressed concerning the availability of health insurance to full-time employees holds true for part-time employees as well. This criterion supports the inclusion of the Union offer in the initial Agreement.

### Comparability

Most of the comparables do not provide health insurance for part-time employees. Only two provide the benefit. Jefferson provides health insurance on a pro-rata basis to part-time employees based on the number of hours worked. Mukwonago provides the benefit to employees who work more than 30 hours per week. This criterion provides strong support to the Village's offer. It would not provide this benefit to part-time employees except to allow an employee's participation should the employee elect to pay the full cost of the premium.

#### j. Such Other Factors - Internal Comparables

There are no part-time employees in the DPW unit. Here again, the Village points to the Dispatcher Agreement which expired in 1990 which did not provide health insurance benefits for part-time employees. Whereas, the Union points to the predecessor to that agreement which did provide health insurance for part-time employees. Currently, part-time employees are not afforded health insurance coverage. The Village pays the full premium for family dental for Kelling. At the hearing, the Village represents that it will continue to pay that benefit on behalf of Kelling, the Assistant Clerk/Treasurer who is a part-time employee working 24 hours per week. It is the Employer that requested that Kelling not work any more than 24 hours per week.

These assurances are nowhere to be found in the Employer's final offer. If the Employer's final offer is ultimately selected for inclusion in the initial Agreement, it may continue to provide that benefit to Kelling. However, if it does so, it is on its own accord, for the Arbitrator considers the failure to grandfather Kelling to provide her with full family dental provides a substantial negative impact on the Employer offer.

In this regard, the Union offer which provides for full health and dental insurance for part-time employees on a pro-rata basis results in a decline in the level of benefits provided to Kelling. If the Union offer is selected for inclusion in the initial Agreement, Kelling would have to pay a pro-rata share of the cost of family dental insurance.

LAW represents the Village's part-time police officers. The Agreement between LAW and the Village contains a provision that permits the Village to provide part-time employees with health insurance. The Village has not exercised its right to provide part-time police officers with this benefit. Part-time employees in the police department are not afforded coverage at the Employer's expense.

The Union's failure to establish a floor for part-time employees who may participate in the Village's health insurance program is a serious flaw in the Union's proposal. Accordingly, the Arbitrator concludes that this criterion supports the Employer's proposal to refrain from paying for the participation of part-time employees in the Village's health and dental insurance programs.

### **Health Insurance Deductibles**

The Union proposes deductibles of \$50 per individual, \$150 per family. The Village proposes deductibles of \$100 per person, \$300 per family.

The analysis on this issue may be telescoped into one paragraph. No comparable municipality has a deductible as low as the one proposed by the Union. Similarly, the internal comparables; the DPW unit which is

represented by the Teamsters, the Police Association, or for that matter the Dispatcher unit do not have \$50/\$100 deductibles. Simply put, there is no support for the Union proposal. Accordingly, the Village proposal for a \$100/\$300 deductible is to be strongly preferred.

### Other Health Insurance Issues

#### Standard for Replacement of Carrier

This is another area where the Village and the Union point to the language of past Dispatcher agreements. The 1985-87 Dispatcher Agreement, contains the identical language proposed by the Union for inclusion in this initial Agreement:

The Village will select the Health and Welfare provider with no less benefits then (sic) the current level of health and dental benefits . . .

The Village proposes that the standard for selection of a health and welfare provider be:

With comparable benefits to the current level of health and dental benefits.

In some cases, this dispute may be of significance. In the context of this dispute between the Village and the Union, this issue is given some weight. The Village proposal is consistent with language in the Department of Public Works and Professional Police Association Agreements. The Dispatcher Agreement contains language which references the maintenance of comparable benefits for the referenced dental plan.

The external comparables provide some support for the Union position. The language proposed by the Union appeared in the expired Dispatcher Agreement, i.e., the 1985-87 Agreement. The Arbitrator concludes that the record evidence supports the inclusion of Village proposal on the standard for replacement of the health insurance carrier.

### Summary

On the basis of the above analysis, the Arbitrator concludes that the provision of health insurance benefits for full-time employees is an obligation of the Employer. Its ability to avoid that obligation to this point provides no basis for its ability to continue to avoid the provision of this benefit to its full-time employees. Its proposal provides the option to employees to participate in a health insurance program. However, it does so at a substantial wage reduction to its current full-time employees.



However, the Union's offer to provide health insurance benefits to part-time employees on a pro-rata basis is supported only by the statutory criterion the interest and welfare of the public. On balance, the Arbitrator concludes that the effect of the Employer's proposal for full-time employees and the Union's unsupported proposal to provide this benefit to part-time employees results in a preference for the Union proposal. The Employer's failure to grandfather the payment of the full premium for family dental insurance to Kelling weighs against its proposal. However, when the "deductibles" issue and the Union's failure to establish a minimum number of hours worked to participate in the health and dental program results in a preference for the inclusion of the Village offer on the Health Insurance category in the initial Agreement.

#### **IV. PRO RATA VACATION AND SICK LEAVE FOR PART-TIME EMPLOYEES**

The Village proposes no fringe benefits for part-time employees. The Union proposes to continue in effect the benefits which the Village provides to part-time employee Kelling. The Village provides her with pro-rata vacation, sick leave and comp time. Here again, the Village represents at the hearing that it would continue to grandfather Kelling under its Memorandum of Agreement which is attached to its final offer. However, the Arbitrator could find no language which even remotely assures Kelling of the continuation of her receiving pro-rata sick leave and vacation benefits.

#### **Comparability-Both Internal and External**

The Village notes that there is little support among comparable employers to the provision of pro-rata fringe benefits to part-time employees. In this regard, Elkhorn and Jefferson do provide pro-rata vacation and sick leave to part-time employees. The other comparables either do not employ part-time employees or do not provide the benefit to them.

Under the LAW Agreement, the Village may provide part-time employees with fringe benefits. The Village has not done so, to date. Again, the Village and the Union point to the Dispatcher agreements referenced above in support of their respective positions.

The Arbitrator concludes that this criterion supports the Employer's proposal.

#### **h. Overall Compensation**

The Union's offer to significantly increase wage rates in the first year of a three year agreement and at the same time provide a new and expensive benefit for part-time employees such as health insurance, cannot support the provision of additional fringe benefits in a first agreement.

On the other hand, under an offer which provides for wage rates which at the termination of the Agreement will not be competitive, the limitation of fringe benefits to full-time employees only further limits the attractiveness of the wage and fringe benefit package which this Village will have to offer new employees in the event of employee turnover. In the context of each proposal, the proration of fringe benefits such as vacation and sick leave serves to exacerbate the problem inherent in the proposal of each party. The Union seeks too much all at once. The Employer offer results in a wage and benefit package which will be uncompetitive.

### Summary

The Union argues that its proposal to provide pro-rata sick leave and vacation benefits to part-time employees is the status quo. As a result, the Employer should bear the burden of defending its proposed change to the status quo. The Village responds to this argument by noting that this is an initial agreement. It is in this agreement that the status quo will be established. As noted above in the background section of this Award, it is the Arbitrator's belief that the Employer and the Union each attempt to establish a status quo which would make bargaining successor agreements for the losing party in this case a difficult task. Nonetheless, the Arbitrator agrees with the Village's analysis. What will be the status quo in the context of this collective bargaining relationship is precisely what is at stake in this arbitration proceeding. What is currently in place is given considerable weight by the Arbitrator. However, it is inappropriate to burden either party with the requirements of changing the status quo in the context of negotiating an initial Agreement. The parties are proceeding from a situation where these employees were unrepresented to coverage under a collective bargaining agreement.

### Conclusion-Pro Rata Vacation and Sick Leave for Part-time Employees

Again the Union failure to establish a minimum number of hours worked to receive these fringe benefits weighs against the Union proposal. The Arbitrator concludes that the Village's proposal to refrain from offering pro-rata vacation and sick leave to part-time employees is preferred.

### LANGUAGE TO PROTECT UNIT WORK

The Union makes several proposals to protect unit work. The Union proposes that supervisors cannot perform unit work except in the case of emergencies. The Union proposal makes no provision for training new employees. Its proposal does not take into account the small size of the unit. It fails to account for the current coverage at the counter provided by supervisory employees in the Clerk's Office. It fails to take account of the political necessity that the Clerk or Deputy Clerk not be placed in the

position of sitting at their desk while members of the public stand at the counter and look at these officers and wonder why they are not being helped.

The Union argues that the closing of the Dispatching Center necessitates the inclusion of work protection language in this initial agreement. The Arbitrator understands why the Union would make the demand that it does in light of the closing of the Dispatching Center during the course of bargaining. However, the agreement of the Employer to refrain from subcontracting if it should result in layoff and the agreement of the Union to such language undermines the Union's argument that the Employer is out to replace these employees. The decision to close the Dispatching Center differs from a decision to subcontract out the dispatching function and lay off all employees who are represented by the Union. Similarly, that decision to close the Dispatching Center differs substantially from the use of supervisors or other employees such as police officers to perform the work of the dispatching unit.

In addition, the Union proposes language which limits the use of part-time employees. The Union proposes a ratio of part-time to full-time employees which again fails to take into account the size of the unit. In addition, the Union proposal fails to take into account the fact that some employees may prefer to remain part-time. Accordingly, the Union's proposals for what would be Article 12 and 23 in an initial Agreement are not supported by any of the statutory criteria.

#### **RIGHTS OF SENIORITY AND OTHER MISCELLANEOUS PROPOSALS**

The Union proposes that employees performing work in a higher classification receive the rate of that higher classification. This proposal ignores the record evidence that there is no interchange of work among the classifications of employees subject to this initial agreement. Furthermore, the proposal provides no minimum amount of time in which an employee may perform some higher classified work and not receive any additional pay for that work. The Arbitrator would understand a proposal which provides that an employee receive her normal rate of pay no matter what task she is assigned. Frankly, there is no indication in this record of any problem in this area. The Union proposal has no support among comparable employers.

The Union makes this proposal on the basis of the inclusion of such language in the Department of Public Works unit. In this regard, clerical employees and public work employees differ substantially in the nature of the work they perform. The inclusion of this clause in this Agreement, at this time, would amount to no more than surplusage.

#### **Maintenance of Standards**

The Union proposes language for the inclusion of a maintenance of standards clause in the Agreement. It proposes:

that all conditions of employment relating to wages, hours of work, overtime differentials, and general working conditions shall be maintained at not less than the highest minimum standards in effect at the time of the signing of this Agreement. . .

The Village argues that the maintenance of standards proposal is so broad that it could cover areas which are permissive subjects of bargaining. The Village did not file a declaratory ruling objecting to this proposal during the course of the fourteen month investigation conducted in this case. Certainly it had opportunity to do so. The failure to do so simply permits the Arbitrator to address the issue on the merits.

In the context of the Union proposal as addressed above, a maintenance of standards provision is burdensome. The Union attempts to include in this initial agreement all provisions which may have existed in prior agreements or in present agreements which are of benefit to employees. Certainly, the Union may attempt to do so. However, in the context of an interest arbitration for an initial agreement, the Union has some obligation to focus its demands. In this regard, the Union proposes the inclusion of health insurance benefits of part-time employees. This is a substantial and expensive benefit. The Union has presented no evidence which substantiates the necessity for the inclusion of maintenance of standards language in the Agreement.

There are a number of other proposals made by the Union and the Village which have little impact on the ultimate result in this case.

### Conclusion

The Union is unable to substantiate the need for much of the language proposals at issue and referenced in the above discussion. Simply put, the Union overwhelms its final offer with these language demands.

### **SELECTION OF THE FINAL OFFER**

In the above discussion, the Arbitrator details at each category of issues the problem inherent to each of the final offers of the parties. In this general summary the totality of each final offer is analyzed and reviewed. It is on the basis of the totality of the final offers relative to the statutory criteria that the Arbitrator selects the final offer for inclusion in the initial agreement between these parties for calendar years 1991, 1992, and 1993.

The major problems associated with the Employer's final offer are as follows: first, and foremost, its proposed two-tier wage schedule. The Employer establishes contractual rates which by the end of this agreement will be approximately \$1.75 below the "high" average paid by comparable employers to employees who are involved in performing accounting and bookkeeping function as well as other clerical duties. The Employer offer will leave it approximately \$1.30 below the low end average paid by comparable employers at the termination of the Agreement in December 1993.<sup>1</sup>

A new employee beginning at the starting rate for the bookkeeping/accounting Assistant Clerk/Treasurer position will be offered a rate of \$7.52 an hour, when the predecessor employee had been paid \$11.71 per hour; that is a wage differential of \$4.19. The Village proposal runs contrary to its own interest. It materially hampers its ability to compete for new employees. It leaves this Employer in a position where incumbents at the Assistant Clerk or Administrative Assistant positions will be paid \$10.70 and a new employee starting with the Village would be paid \$7.52. The new employee after two years of service, assuming, cents across the board increases over that period of time, would receive between \$1.00 and \$1.19 per hour less than the incumbents while performing similar work. Such a wage disparity will only produce friction and problems in a small work setting such as the one which exists in the Village of East Troy.

Another difficulty with the Employer's offer is its assumption that all full-time employees will avail themselves of the Village health insurance benefit soon after the issuance of this Award. The Village costs a large portion, but not all of the cost, of the health insurance to the package. The annual cost of premium exceeds \$4,000 in 1992. For a short period of 1992, any full-time employee who decides to participate in the program will generate a large cost increase to the Employer equal to or greater than the cost of the wage increase for the entire year. The cost for health insurance for 1993 for any of the three full-time employees who decide to participate in the Village's health insurance program will far exceed any wage increase.

In the above analysis, the Arbitrator discounts the cost which the Village may incur in providing health insurance for its full-time employees. The Employer has been able to avoid such costs up to this point. This benefit is available universally among all comparable employers. It is provided to full-time employees in the other units of this Employer. The importance of employees receiving health insurance benefits at the workplace is well recognized. In one of the early interest arbitration cases decided after the passage of the statute in Wisconsin, Arbitrator Stern observed that there are situations in which an employer may be faced with

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<sup>1</sup>The Arbitrator assumes a 3 % or 4% increase for calendar year 1993 at the bookkeeper/accounting classification and a similar increase at the secretary/clerical classification for 1993.

large costs which it has been able to avoid for an extended period of time. Those costs should not be paid again by members of the bargaining unit when the Employer is finally confronted with the situation in which it must provide either a wage rate or a benefit which is universally afforded to employees.<sup>2</sup>

This is a very difficult case in which to select a final offer. It is difficult because the extent to which the Employer's offer is substantially off the mark in terms of the manner in which it approaches the establishment of a contractual wage schedule for new employees and its provision of health insurance for full-time employees is directly proportionate to the Union's demand for a wage increase approximating between 17-20% in the first year, 1991, of the Agreement. In this regard, the Union's demand projects wage rates to such a level that despite the Village's proposal to freeze the secretary/clerical rate for the duration of the Agreement, the Village's offer is closer to the average that rates are likely to be in 1993 than the Union proposes. At the high end of the clerical rates, the Union proposal will be 90¢ above the average. At the low end of those rates, the Arbitrator projects that the Union proposal of \$11.84 per hour will be approximately \$1.80 above the average. Only Jefferson and Milton pay higher rates for secretary/clerical employees than those proposed by the Union.

In addition to submitting a monetary demand which in the first year has the effect of raising wages by 17-20% without any market basis for such a large increase, the Union offer suffers in several other respects. The Union proposes health insurance for part-time employees. As noted above, the Union fails to establish a minimum level for a part-time employee's eligibility to participate in the Village's health insurance program. Health insurance is a costly benefit. Although the health insurance benefit would not go into effect until after the issuance of this Award, it comes on top of a large monetary increase.

At least one of the Union's language proposals is contrary to its best interest. The Union proposes that supervisors be prohibited from performing bargaining unit work except in cases of emergencies. The Arbitrator notes above that there are few individuals who work in the Village Clerk's office. It is unlikely that the Village Clerk or the Deputy Clerk will permit a member of the public to wait at the counter if a bargaining unit employee is not immediately available to help. Consequently, the Union's proposal places the Union in the position of persistently grieving a violation of this proposal, or in the alternative, the Union choosing to refrain from enforcing a provision of the Agreement. Neither is a healthy choice for the Union.

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<sup>2</sup>The Employer currently pays the full cost of dental insurance for full-time employees. Under its offer it will continue to do so.

The Union proposal to avoid duplicate coverage does run afoul of the opinion of the Wisconsin District Court of Appeals. The Braatz decision, in the opinion of this Arbitrator, makes the Union proposal illegal in that it violates the statutory prohibition against discrimination on the basis of marital status. Although there is a severability clause in the tentative agreements, nonetheless the illegal nature of the Union's proposal constitutes a basis for avoiding the selection of the Union's offer for inclusion in the initial Agreement of the parties.

The Union proposal to establish a ratio of part-time to full-time employees would be difficult to enforce. As noted above, the Union's concern to protect full-time employment and the integrity of the unit is understandable in the face of the closing of the Dispatching Center during the course of the negotiations of this Agreement. However, the Union would have done better to propose that present part-time employee(s) in a particular classification be provided with right to first refusal of additional work hours or to move to full-time employment if a new full-time position is created by the Village. To sum up, the Union attempts too much too fast for an initial Agreement.


In the experience of this Arbitrator, this is the first occasion where the selection of either final offer will be harmful to the party proposing that final offer. The discussion in this subheading substantiates that concern. Nonetheless, the Arbitrator is constrained by statute to select the final offer which is the least destructive. The Arbitrator finds that the Employer's final offer meets that test. The Union proposal is not only too rich, but the language proposed by the Union would be difficult to implement and enforce.

On the basis of the above Discussion, the Arbitrator issues the following:

**AWARD**

Based upon the statutory criteria found in Sec. 111.70(4)(cm)7.a.-j. of the Wis. Stats., upon the evidence and arguments of the parties, and for the reasons discussed above, the Arbitrator selects the final offer of the Village together with the stipulations of the agreed upon items to constitute the initial Agreement between the Village of East Troy and Teamsters Local Union No. 579 for the clerical employees of the Employer for calendar years 1991, 1992, and 1993.

Dated at Madison, Wisconsin, this 21st day of September, 1992.

  
Sherwood Malamud  
Arbitrator