In the Matter of the Arbitration Between:

VILLAGE OF GRAFTON,

and

LABOR ASSOCIATION OF WISCONSIN, INC., FOR AND ON BEHALF OF THE GRAFTON POLICE CLERICAL AND DISPATCHER EMPLOYEES' ASSOCIATION

Case 16
No. 51947
INT/ARB-7488
Decision No. 28424-A

Appearances: Thomas A. Bauer, Labor Consultant, for the Association
Roger E. Walsh, Attorney at Law, for the Employer

Labor Association of Wisconsin, Inc., for and on Behalf of the Grafton Police Clerical and Dispatcher Employees' Association, hereinafter referred to as the Association, filed a petition on December 14, 1994 with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, wherein it alleged that an impasse existed between it and the Village of Grafton, hereinafter referred to as the Employer, in their collective bargaining. It requested that the Commission initiate arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act. A member of the Commission conducted an investigation in the matter and submitted a report.

The Commission found that the Association has been and is the exclusive collective bargaining representative of certain employees of the Employer in a collective bargaining unit consisting of all regular full-time and regular part-time nonsworn employees of the Village of Grafton police department, excluding supervisory, managerial and confidential employees. The Association and the Employer have been parties to a collective bargaining agreement covering wages, hours and working conditions of the employees that expired on December 31, 1994.

On September 7, 1994, the parties exchanged their initial proposals on matters to be included in the new collective bargaining agreement to succeed the one that expired on December 31, 1994. Thereafter, the parties met on three occasions in efforts to reach an accord on a new agreement. On December 14, 1994, the Association filed a petition requesting that the Commission initiate arbitration. On January 19, 1995, a commissioner of the Commission conducted an investigation that reflected that the parties were deadlocked in their negotiations. By May 19, 1995, the parties had submitted their final offers and the investigation was closed and the Commission was advised that the parties remained at impasse.

The Commission concluded that the parties had substantially complied with the procedures set forth in Section 111.70(4)(cm) of the Municipal Employment Relations Act prior to initiation of arbitration and that an impasse within the meaning of the act existed between the parties with respect to negotiations leading toward a new collective bargaining agreement covering wages, hours and conditions of employment.

The Commission ordered that arbitration be initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the parties and directed them to select an arbitrator. Upon being advised that the parties had selected Zel S. Rice II as the arbitrator, the Commission issued an order appointing him as the arbitrator to issue a final and binding Award pursuant to Section 111.70(4)(cm)6 and 7 of the Municipal Employment Relations Act to resolve the impasse by selecting either the total final offer of the Association or the total final offer of the Employer.

The parties have reached an agreement on all issues except the vacation schedule. The changes in the vacation schedule proposed by the Association, attached hereto and marked "Exhibit 1", provide that after completion of five years of continuous service, each employee would receive three weeks of vacation and after completion of ten years of continuous service, each employee would receive four weeks of vacation. The Employer's proposal with respect to vacation, attached hereto and marked "Exhibit 2", would retain the status quo which provides that after seven years of continuous service, an employee receives three weeks of vacation and after fourteen years of continuous service, an employee receives four weeks of vacation.

COMPARABLE GROUP

The Association contends that the appropriate comparable group should consist of the City of Port Washington, Ozaukee County, City of Mequon, and the Village of Germantown, hereinafter referred to as Comparable Group A. This comparable group was selected by Arbitrator Dan Nielsen in a case involving the City of Cedarburg Police Department.

The Employer proposes as the appropriate comparable group eight neighboring municipalities. They are the City of Cedarburg, Village of Germantown, City of Mequon, City of Port Washington, Village of Saukville, Village of Thiensville, Ozaukee County and Washington County, hereinafter referred to as Comparable Group B. The Village of Germantown is located in Washington County and the other cities and villages are located in Ozaukee County, as is the Employer. The Employer's list of comparables is based on a decision by Arbitrator Steven Briggs in the only other interest arbitration proceeding involving the Employer. The 1983 decision

involved a dispute with the Employer's public works employees. Briggs determined that the eight external comparables that make up Comparable Group B were the appropriate comparables to be used in the 1983 proceedings.

The Association contends that Arbitrator Nielsen did not include the communities of Saukville, Thiensville and Washington County in the comparable group he relied on in his Cedarburg award. It argues that Nielsen found that Saukville and Thiensville were not appropriate for comparison to the Employer because neither community has twenty-four hour dispatch service, both communities employ one or two dispatcher employees and the communities are much smaller than the Employer.

The Association urges the arbitrator to reject inclusive of Saukville and Thiensville in a comparable group. It contends that Washington County is not an appropriate comparable because it is too large in relation to population. The Association takes the position that each of the communities in Comparable Group A are in close geographic proximity to the Employer and have been traditionally relied upon by the Employer as comparable communities with respect to its bargaining units. It asserts that each of those communities competes in the same labor pool for employees, and the employees and population within those communities compete for the same goods and services. The Association argues that these communities demonstrate a significant degree of comparability to the Employer based upon their geographic proximity. It contends that Comparable Group B is not a reasonable comparison group because it includes Saukville and Thiensville which are too small in comparison to the Employer, and Washington County is far too large.

The Employer argues that the eight neighboring communities making up Comparable Group B constitute the appropriate external comparables in this proceeding. It points out that the Village of Germantown is located in Washington County and the other cities and villages are located in Ozaukee County, as is the Employer. The Employer takes the position that its list of comparables is based on a decision by Arbitrator Briggs in the only other interest arbitration proceeding in which it has been involved. In the 1983 proceeding, there was a dispute between the Employer and a Union over the list of appropriate comparables and Arbitrator Briggs determined that the eight external communities in Comparable Group B were the appropriate comparables to be used in that proceeding. The Employer argues that in the 1983 proceeding, the Union did not propose that Saukville and Thiensville be included in the list of external comparables but Arbitrator Briggs agreed with the Employer that they should be included. It contends that the relationship of the population of Saukville and Thiensville to it in 1995 is basically the same as it was in 1983. The Employer points out that those communities had 1/3 of its population in 1983 and they have 1/3 of its population now.

The Union opposed the inclusion of Washington County in the appropriate comparable group in 1983 but Arbitrator Briggs held that since Washington and Ozaukee counties are contiguous and Germantown is on the Washington/Ozaukee county line, Washington and Ozaukee counties are comparable. The Employer argues that since the Briggs decision involved the Employer and is based on sound rationale his decision is preferable to the Nielsen decision and Comparable Group B is the appropriate comparable group.

The Employer argues that Thiensville has been held to be comparable in interest arbitration involving other Ozaukee County municipal employers and that the issue of using Saukville as a comparable was not an issue in other decisions involving municipal employers in Ozaukee County. It asserts that Saukville's population of 3,695 exceeds Thiensville's population of 3,301 and since Thiensville has been utilized in prior arbitration decisions involving other Ozaukee County municipal employers there is no reason to exclude either community from the comparable group in this proceedings.

The arbitrator is inclined to find that once a comparable group has been determined in an arbitration as appropriate for a community, arbitrators in subsequent proceedings should utilize the same comparable group unless it is absolutely flawed. The parties should be able to rely upon a comparable group in their negotiations and if one arbitrator comes up with a reasonable comparable group, arbitrators in subsequent proceedings should utilize the same group unless there is some good reason for not doing it. In this case there is no good reason for not continuing to use Comparable Group B and this arbitrator will utilize it as the most appropriate group. However, the arbitrator does not find Comparable Group A to be completely flawed and he will consider it as a secondary comparable that should be given consideration.

ASSOCIATION'S POSITION

The Association argues that both Cedarburg and Port Washington, which are part of both Comparable Groups A and B provide that an employee who completes five years of continuous service will earn three weeks of vacation leave which is consistent with its offer. It contends that four of the five communities in the Comparable Group A provide the same vacation year requirements for their dispatchers as they do for their sworn police personnel. The Association takes a position that this fact is significant because it illustrates that in the majority of comparable police agencies surrounding the Employer, the dispatcher employees are treated similarly to their police counterparts with regard to vacation benefits. It asserts that its proposal addresses the disparity between the dispatcher employees and the police officer employees in the Employer's police department.

The Association concedes that its position with regard to four weeks of vacation after ten years is not supported by Comparable Group A, but it points out that four of the five communities in that comparable group provide the same vacation service year requirements for their dispatchers as they do for their sworn police personnel in the department. The Association argues that its employees look to their counterparts in the surrounding communities and quickly discover any differences in wages or benefits and discuss their wages and working conditions as well as their level of benefits and recognize when they are not treated fairly by their employer. It contends that the disparity that exists between the Employer's dispatcher bargaining unit with respect to vacations and the communities that make up Comparable Group A should be eliminated and its proposal should be adopted by the arbitrator. The Association takes the position that the majority of internal comparables favor its final offer as it relates to the number of service years required to earn three weeks of vacation. It points out that the police officers and nonrepresented employees earn three weeks of vacation after five years and the public works employee bargaining unit is the only internal comparable requiring seven service years for three weeks of vacation. It asserts that its final offer as it relates to decreasing service years to earn three weeks of vacation is favored by the internal comparables and its proposal should be adopted by the arbitrator.

The Association concedes that its final offer as it relates to decreasing the service years to earn four weeks of vacation after ten years is only supported by one internal comparable. However, it takes the position that the dispatchers should appropriately be compared to the police officer bargaining unit because the dispatchers have a direct community of interest with the police officers because they work for the same employer, are answerable to the same supervisors and department head, are required to follow the same department rules, regulations, policies and procedures, and attend department meetings in which the same information that is disseminated to the sworn officers is disseminated to the dispatchers. The Association argues that parity among employees of the same Employer promotes labor stability and safeguards the welfare of the public because it does not create a separation of benefits from one employee group to another that results in animosity.

With respect to cost, the Association argues that in 1995 only one dispatcher employee will be affected by its final offer to decrease the service years to earn three weeks of vacation. The total economic impact of the Association's final offer of three weeks of vacation after five years will affect only one employee and its cost to the Employer will be 0.3% in new money above the wage increase that has been agreed upon by the parties for 1995. It points out that in 1996 a total of three bargaining unit employees will be affected by its offer of decreasing the service

years to earn three weeks of vacation and the total impact on the bargaining unit will be less than 1% over and above the wage increase agreed upon by the parties for 1996. The Association argues that its vacation proposal would not impose an undue burden upon the Employer.

EMPLOYER'S POSITION

The Employer argues that the Association has not met its burden of supporting the necessity for the change in vacation requirements and has not offered any quid pro quo in return. It contends that the external comparables in Comparable Group B do not support the Association's proposal to change the eligibility requirements for the third and fourth week of vacation. It takes the position that only two of the eight external comparables grant a third week of vacation after five years and the remaining six communities in Comparable Group B grant the third week of vacation after seven or eight years. It asserts that there is no widespread practice among the comparables that supports the Association's request for three weeks of vacation after only five years of service.

The Employer argues that none of the eight communities in Comparable Group B grant four weeks vacation after ten years and four of those communities require fourteen or fifteen years of service to earn a fourth week of vacation. It contends that its proposal is equal to or better than four of eight communities in Comparable Group B and the other four communities in that comparable group require twelve or thirteen years of service to earn a fourth week of vacation.

The Employer argues that its public works bargaining unit has the same vacation eligibility requirements in its 1995-1996 collective bargaining agreement for the third and fourth week of vacation that are contained in its proposal and it was negotiated during the same time period involved in the negotiations between the Association and the Employer for the same period. It contends that the public works bargaining unit agreement supports its final offer. It concedes that the 1993-1995 agreement between it and the police officer bargaining unit contains the same vacation eligibility requirements for the third and fourth week of vacation that are being proposed by the Association in this proceeding.

The Employer takes the position that while the internal comparables appear to end in a draw because the Department of Public Works employee's agreement supports the Employer's position and the agreement with the police supports the Association's position, that it is not the case. It points out that in their initial negotiation proposals for the 1995-1996 agreement, the public works employees sought a change in the eligibility requirements for the third week of vacation but the Employer would

not agree and the issue was eventually dropped and the voluntary settlement for the 1995-1996 agreement with the public works employees was the same as that proposed by the Employer. The Employer argues that it is destructive to voluntary collective bargaining to have one bargaining unit gain in interest arbitration what another bargaining unit of the same Employer sought but failed to gain in a voluntary settlement. It contends that such a situation discourages a voluntary settlement and encourages recourse to interest arbitration.

The Employer takes the position that the internal comparables do not support the Association's desire to change the status quo. It asserts that the Association seeks to change the status quo but offers no quid pro quo to buy its proposed change in the vacation eligibility requirements for the third and fourth weeks of vacation. The Employer argues that there was no concession made by the Association on any item or in the tentative agreements or in the Association's final offer and there is no quid pro quo offered for substantial change in the vacation eligibility requirements for the third and fourth week of vacation. It takes the position that the Association's proposed change involves a significant benefit to the bargaining unit because 50% of its members would be eligible for the third week of vacation during the term of the agreement. The Employer asserts that because the Association has failed to offer a quid pro quo for the change in vacation requirements, its proposal must be rejected.

DISCUSSION

The external comparables in Comparable Group B do not support the Association's proposal to change the eligibility requirements for the third and fourth week of vacation. Only two of the eight external comparables in Comparable Group B grant a third week of vacation after five years and the remaining six communities grant the third week of vacation after seven or eight years. Only two communities in Comparable Group A, which is relied upon by Association, provide employees with three weeks of vacation after five years of continuous service. Those two communities are Cedarburg and Port Washington which are the same two communities in Comparable Group B that provide three weeks of vacation after five years. That is something less than an overwhelming pattern and the arbitrator finds that even Comparable Group A provides only modest support for the position of the Association and Comparable Group B provides overwhelming opposition to the concept of three weeks of vacation after five years.

None of the eight communities in Comparable Group B grant four weeks of vacation after ten years and four of those communities require fourteen or fifteen years of service to earn a fourth week of vacation. The Employer's proposal of the status quo is equal to or better than four of the eight communities in Comparable Group B and the other four communities in it require twelve or thirteen

years of service to earn a fourth week of vacation. The Association concedes that its position with regard to four weeks of vacation after ten years is not supported by Comparable Group A, the comparable group that it considers the most appropriate.

The Association takes the position that the majority of internal comparables favor its final offer as it relates to the number of service years required to earn three weeks of vacation. The Employer's police officers and nonrepresented employees earn three weeks of vacation after five years and the public works employees' bargaining unit is the only internal comparable requiring seven years of service for three weeks of vacation. That does indicate somewhat of a pattern among the internal comparables for three weeks of vacation after five years. However, there is no pattern among the internal comparables supporting the Association's position that it should receive a fourth week of vacation after ten years. The Employer does give its police officers four weeks of vacation after ten years but no other community in either Comparable Group A or B provides that benefit. The Association has reached too far in an attempt to improve its vacation benefits. The Employer is the only community in either of these two comparables groups that provides any of its employees four weeks of vacation after ten years of service. It provides that benefit to its police officers and there is no evidence as to why it provides such a special benefit to them. Ordinarily, employers do try to have uniformity of vacation benefits and other fringes for all of their bargaining units and there is good reason for it because it avoids attempts by bargaining units to whipsaw their employers into providing benefits that were given to other bargaining units for a very special reason. This arbitrator ordinarily gives substantial weight to the argument that the internal pattern supports a position. However, there is no pattern among the internal comparables that would support four weeks after ten years and there is no substantial pattern supporting three weeks after five years. Under the circumstances the arbitrator finds that the comparable groups advocated by both the Employer and the Association lend greater support to the Employer's position than to that of the Association. The internal comparables lend very little support to the Association's position because only one of the Employer's four employee groups gets a fourth week of vacation after ten years.

The Association takes the position that the disparity that exists between the Employer's dispatcher bargaining unit and its police bargaining unit should be eliminated. It provides no evidence in support of that position except that in several other communities in Comparable Group A, the police officers and the dispatchers receive the same vacation benefits. The arbitrator is not impressed by that fact. The work of police officers is substantially different from that of dispatchers and there are specific reasons why their work requires special benefits for them. The Association presented no evidence to support its argument that the dispatchers should receive the same vacation benefits as the

Employer's police officers other than its contention that dispatchers work for the same employer as the police officers and have a direct community of interest with them. They are answerable to the same supervisors and department heads and are required to follow the same departmental rules, regulations, policies and proceeds and attend department meetings at which the same official information disseminated to the sworn officers is dissemination to the dispatchers. None of those are arguments that would support the overwhelming evidence provided by the comparison of the Association's offer with the pattern in the comparable groups.

The Association has not met its burden of supporting the necessity for change in vacation requirements and has not offered a quid pro quo to buy its proposed change in the vacation benefits. This arbitrator does not require a quid pro quo in order to approve of a new benefit for a bargaining unit in every case. When employees are requesting a benefit that is a prevailing pattern in both external comparable groups and with internal comparable groups, the employees should not necessarily be required to give a quid pro quo in order to obtain a benefit that comparable employees already receive. That is not the case here. No police dispatchers receive four weeks of vacation after ten years in either the internal or external comparables and there is no prevailing pattern of support for three weeks of vacation after five years. Accordingly the arbitrator deems the evidence insufficient to justify a change in the vacation schedule such as that sought by the Association.

It therefore follows from the above facts and discussion thereon that the undersigned renders the following

AWARD

After full consideration of the criteria set forth in the statutes and after careful and extensive evaluation of the testimony, arguments, exhibits and briefs of the parties, the arbitrator finds that the Employer's final offer more closely adheres to the statutory criteria than that of the Association and directs that its proposal contained in "Exhibit 2" be incorporated into the Collective Bargaining Agreement as a resolution of this dispute.

Dated at Sparta, Wisconsin this 20th day of December, 1995.

Zel S. Rice II, Arbitrator

EXHIBIT 1

RECEIVED
APR 25 1995
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

FINAL OFFER
OF THE
VILLAGE OF GRAFTON POLICE CLERICAL & DISPATCHER EMPLOYEES' ASSOCIATION

April 21, 1995

1. The provisions of the 1993 - 1994 collective bargaining agreement are to be continued into the successor collective bargaining agreement to be executed by the parties, except as modified as follows:

2. ARTICLE V - PAY POLICY (See attached Appendix "A")

Effective:	January 1, 1995	-	3.5% a.t.b.
	January 1, 1996	-	3.5% a.t.b.

3. ARTICLE VI - VACATIONS *MODIFY* Section 6.01 follows.

SECTION 6.01 Each full-time employee shall earn and receive a vacation from the time they are employed based on years of continuous service accrued. A week of vacation is considered to be five (5) eight (8) hour days at straight-time based on the following schedule:

After completion of one (1) year of continuous service	-	two (2) weeks
After completion of ~~seven (7)~~ five (5) years of continuous service	-	three (3) weeks
After completion of ~~fourteen (14)~~ ten (10) years of continuous service	-	four (4) weeks
After completion of twenty-five (25) years of continuous service	-	five (5) weeks

4. Inclusion of all Tentative Agreements dated December 5, 1994, and initialed on January 19, 1995

Dated at Appleton, Wisconsin, this 21st day of April, 1995

Very truly yours,

LABOR ASSOCIATION OF
WISCONSIN, INC.

Thomas A. Bauer
Labor Consultant

APPENDIX "A" - PAY SCHEDULE

The hourly wage rates for the classifications listed below will be as follows:

DISPATCHERS:

	Current Rate Of Pay	Effective Jan. 1, 1995	Effective Jan. 1, 1996
Start	9.39	9.71	10.05
After 6 Mos.	9.81	10.15	10.51
After 1 Yr.	10.21	10.57	10.94
After 2 Yrs.	10.40	10.76	11.14
After 3 Yrs.	10.63	11.00	11.39
After 4 Yrs.	10.87	11.25	11.64
After 5 Yrs.	11.10	11.49	11.89

COURT CLERK:

	Current Rate Of Pay	Effective Jan. 1, 1995	Effective Jan. 1, 1996
Start	7.09	7.34	7.60
After 6 Mos.	7.44	7.70	7.97
After 1 Yr.	7.73	8.00	8.28
After 2 Yrs.	8.22	8.51	8.81
After 3 Yrs.	8.50	8.80	9.11
After 4 Yrs.	8.74	9.05	9.37
After 5 Yrs.	8.97	9.28	9.60

When the Court Clerk is temporarily performing Dispatcher duties, the Court Clerk/Dispatcher shall receive a rate of Dispatcher pay at the same increment step level as the Court Clerk's step level.

TENTATIVE AGREEMENTS
BETWEEN THE
VILLAGE OF GRAFTON
AND THE
VILLAGE OF GRAFTON POLICE CLERICAL & DISPATCHER EMPLOYEES' ASSOCIATION

December 5. 1994

1. The Court Clerk/Dispatcher wages shall be modified as follows:

	Current Wage Increments	Proposed Wage Increments
Start	7.09	7.09
After 6 Months	7.44	7.44
After 1 Year	7.73	7.73
After 2 Years	8.22	8.22
After 3 Years	-----	8.50
After 4 Years	-----	8.74
After 5 Years	-----	8.97

2. APPENDIX "A" - PAY SCHEDULE

DELETE the last paragraph on page 16. and *REPLACE* with the following new language:

When the Court Clerk/Dispatcher is temporarily performing Dispatcher duties, the Court Clerk/Dispatcher shall receive a rate of Dispatcher pay at the same increment step level as the Court Clerk/Dispatcher's step level for all time spent while performing duties as a Dispatcher, for durations of one-half (½) hour or more.

3 *CONTINUE* the Letter of Understanding. page 17. regarding choosing shifts. compensatory time. breaks. and less than one week vacations into the successor agreement for 1995. 1996

4. *MODIFY* the Article - Duration to reflect a 2-year agreement. effective January 1. 1995, through and including December 31. 1996.

EXHIBIT 2

REVISED FINAL OFFER
OF THE VILLAGE OF GRAFTON TO
THE LABOR ASSOCIATION OF WISCONSIN, INC.
(Police Clerical and Dispatcher Employees Contract)

May 10, 1995

The provisions of the 1993-1994 Agreement are to be continued in a new two year contract to be executed by the parties except as modified by the Tentative Agreements, dated December 5, 1994 and initialled on January 19, 1995 (a copy of which is attached), and by the following:

1 WAGES

Effective 1/1/95 - 3.5%
Effective 1/1/96 - 3.5%

TENTATIVE AGREEMENTS

BETWEEN THE
VILLAGE OF GRAFTON
AND THE
VILLAGE OF GRAFTON POLICE CLERICAL & DISPATCHER
EMPLOYEES' ASSOCIATION

December 5, 1994

1. The Court Clerk/Dispatcher wages shall be modified as follows:

	Current Wage Increments	Proposed Wage Increments
Start	7.09	7.09
After 6 Months	7.44	7.44
After 1 Year	7.73	7.73
After 2 Years	8.22	8.22
After 3 Years	—	8.50
After 4 Years	—	8.74
After 5 Years	—	8.97

2. APPENDIX "A" - PAY SCHEDULE

DELETE the last paragraph on page 16, and *REPLACE* with the following new language:

When the Court Clerk/Dispatcher is temporarily performing Dispatcher duties, the Court Clerk/Dispatcher shall receive a rate of Dispatcher pay at the same increment step level as the Court Clerk/Dispatcher's step level for all time spent while performing duties as a Dispatcher, for durations of one-half (1/2) hour or more.

3. *CONTINUE* the Letter of Understanding, page 17, regarding choosing shifts, compensatory time, breaks, and less than one week vacations into the successor agreement for 1995/1996.

OK
1/19/95

4. ARTICLE XIX - DURATION

MODIFY this Article as follows:

SECTION 19.01 - DURATION The entire Agreement as set forth above shall become effective on January 1, 1995, and expire at midnight on December 31, 1996.

SECTION 19.02 - AMENDMENTS The Village and the Association hereto agree that if either party desires to amend and modify this Agreement for the period commencing January 1, 1997, the party who desires the amendment shall notify the other in writing on or before September 1, 1996. the parties shall thereafter and within thirty (30) days of receipt of such notification meet and confer in an attempt to reach a solution on the matter to which the amendment is sought.

OK

1/19/95