ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between VILLAGE OF GERMANTOWN And THE LABOR ASSOCIATION OF WISCONSIN, INC.	CASE 40 NO. 53591 INT/ARB-7855 Decision No. 28860-A

Impartial Arbitrator

William W. Petrie
217 South Seventh Street #5
Post Office Box 320
Waterford, WI 53185-0320

Hearing Held

Germantown, Wisconsin
January 22, 1997

Appearances

For the District — von BRIESEN, PURTELL & ROPER, s.c.
By James R. Korom
Attorney at Law
411 East Wisconsin Avenue
Milwaukee, WI 53202

For the Association — THE LABOR ASSOCIATION OF WISCONSIN, INC.
By Patrick J. Coraggio
Labor Consultant
2825 North Mayfair Road
Wauwatosa, WI 53222

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Village of Germantown and The Labor Association of Wisconsin, Inc., with the matter in dispute the terms of a renewal labor agreement between the parties covering a bargaining unit of Telecommunicators, consisting of regular and full-time Clerk Dispatchers, and covering January 1, 1996 through December 31, 1998.

The parties met in preliminary negotiations and, after their inability to reach a full agreement on the renewal agreement, the Association on December 21, 1995 filed a petition with the Wisconsin Employment Relations Commission seeking final and binding arbitration of the impasse pursuant to Section 111.70(4)(cm)(6) of the Wisconsin Statutes. During the preliminary investigation by a member of the Staff of the Wisconsin Employment Relations Commission, the parties exchanged final offers on August 22, 1996, the Commission on September 23, 1996 issued certain *findings of fact, conclusions of law, certification of results of investigation and an order requiring arbitration*, and on October 15, 1996 it issued an *order appointing arbitrator* directing the undersigned to hear and decide the matter.

An interest arbitration hearing took place before the undersigned in Germantown, Wisconsin on January 22, 1997, at which time both parties received full opportunities to present evidence and argument in support of their respective positions, and both thereafter closed with the submission of post hearing briefs and reply briefs, after which the record was closed by the undersigned effective April 18, 1997.

THE FINAL OFFERS OF THE PARTIES

The final offers of both parties, hereby incorporated by reference into this decision, are in addition to the tentative agreements of the parties and generally provide as follows:

(1) The Association proposes the following additional changes to the expired agreement:

(a) That Article VIII, entitled **Wages**, be modified as follows: effective *January 1, 1996*, that all steps be increased 3.5%, and that a five year step be created at 1% over the fourth year step; effective *January 1, 1997*, that all steps be increased 3.5%, and that an eight year step be created at 1% over the 1997 five year step; effective *January 1, 1998*, that all steps be increased by 4%.

(b) That Article XII, entitled **Work Day and Work Week**, be modified as follows:

(i) By the addition of a new Section 12.03 to provide as follows:

"The established work shifts shall be 8:00 a.m. to 4:00 p.m., 4:00 p.m. to 12:00 a.m. and 12:00 a.m. to 8:00 a.m. and at the option of the Chief of Police, one or two additional shifts for relief shift employees may be created with established times of 11:00 a.m. to 7:00 p.m. and/or 7:00 a.m. to 3:00 p.m."

(ii) By the addition of a new Section 12.04 to provide as follows:

"Assignment to a relief shift shall be by seniority, as with other shifts. The relief shift may be an established shift or as set forth in Section 12.03. Designated relief shift employees shall fill voids due to scheduling shortages on the other shifts so as to maintain the necessary manpower as required for the continued operation of the department. An employee who is assigned to a relief shift and is scheduled to jump shifts more than one (1) time per work week (4 or 5 day work week) shall be compensated by the payment of an additional one-half (1/2) hour of pay for each hour worked outside of their normally assigned shift. Not more than two (2) non-probationary employees shall be designated as relief shift employees at any one time."

(c) That Section 15.01 of Article XV, entitled **Staffing Procedure**, be rewritten to provide as follows:

"Telecommunicator staffing vacancies shall be resolved by the Communications Supervisor or the Supervisor on duty through following these sequential steps:

1. Overtime which is four (4) hours or more will be offered to the employees who are off duty on a seniority basis. If the employees who are off do not volunteer for the overtime or cannot be reached, then split the overtime and offer the overtime to telecommunicators who are on duty and the telecommunicators who will be reporting for duty on the next regularly assigned shift after the overtime shift. If no one volunteers for the overtime, the Supervisor shall split the shift and assign four hours to the least senior telecommunicator working the shift prior to the vacant shift and shall order in the least senior telecommunicator four (4) hours early that is working the shift immediately following the vacant shift.

2. Overtime which is less than four (4) hours will be offered to the employees whose shift is contiguous or closest to the overtime on a seniority basis. If the employees whose shift is contiguous or closest to the overtime do not volunteer, the employer shall offer the overtime to the employees who are off duty and if none of the employees who are off duty volunteer for the overtime or cannot be reached, the employer shall

assign the overtime to the least senior employee whose shift is contiguous or closest to the overtime.

3. Employees who work overtime under this staffing procedure shall not be denied the right to work their regular shift unless mutually agreed otherwise."

(2) The Employer proposes the following additional changes to the expired agreement:

(a) That Article VIII, entitled Wages, be modified as follows: effective *January 1, 1996*, that all steps be increased by 3%, and that a new five year step be created at $400 above the 1996 fourth step; effective *January 1, 1997*, that all steps be increased by 3%; and, effective *January 1, 1998*, that all steps be increased by 3.5%.

(b) That Article XII, entitled *Work Day and Work Week*, be modified by the addition of a new Section 12.03 to provide as follows: "There shall be no change in the starting times of the shifts during the term of this agreement."

(3) That the Association be provided with the following described option:

(a) "Within 30 calendar days of the issuance of the arbitration award in this matter, the Association may exercise its sole option to delete § 14.02, and to replace Article 15.01 with the attached language."

(b) The above referenced *attached language* consists of the following:

"Article XV - Staffing Procedure

Section 15.01: There shall be a minimum of two telecommunicators regularly assigned to the day shift, two to the second shift, one to the third shift, and two to the relief shift.

Section 15:02: The work schedule for the month shall be posted by the 10th day of the previous month. All requests for personal days (§ 24.01) and vacation days (§ 17.03) must be submitted by the 5th day preceding the month for which the time off is requested. The Department will consider, but is not required to grant, requests submitted after this deadline. Not more than one employee will be allowed to use vacation time or personal leave on any calendar day. § 13.01 is unaffected by this Article.

Section 15.03: Telecommunicator staffing vacancies for a regularly scheduled shift shall be resolved by the communications supervisor or supervisor on duty, through the following sequential steps:

1. Assign a relief telecommunicator.

2. Assign extended shifts to the telecommunicator on duty and the telecommunicator scheduled to work on the next shift.

3. Assign, on a seniority basis, the full-time telecommunicators not scheduled to work.

The telecommunications supervisor or supervisor on duty may elect not to follow this procedure in emergency situations, to be defined as situations where less than one hour notice is received of a vacancy which the Village decides to fill. Good faith errors in applying this procedure shall result in priority call in for the affected employee, not back-pay."

THE ARBITRAL CRITERIA

Section 111.70(4)(cm)(7) of the Wisconsin Statutes directs the Arbitrator to utilize the following criteria in arriving at a decision and rendering an award:

"7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislature to administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

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. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

e. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of

employment of other employees generally in public employment in the same community and in comparable communities.

f. Comparisons of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost-of-living.

h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pension, 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 hearing.

j. Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

POSITION OF THE ASSOCIATION

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

(1) That Section 111.70(4)(cm) of the Wisconsin Statutes contains two new paragraphs which arbitrators are required to utilize in rendering an award, paragraphs 7 and 7g, provided that either of the parties argues that either or both of the new paragraphs apply to a dispute. That since neither of the parties has relied upon either of these new paragraphs, the Arbitrator need not address these paragraphs in these proceedings.

(2) That the Employer has the *lawful authority* to meet the terms and conditions set forth in the Association's final offer, and that this criterion is not herein in dispute.

(3) In connection with *the stipulations of the parties*, that only one tentative agreement has the potential to increase the Employer's operating expenses, the agreed upon modification of Article XXX, entitled **Retirement**, wherein the Employer agrees to contribute "the full employee's share", rather than a set percentage, "not to exceed 6.4% of the employee's share. That this language change thus provides a benefit to the Telecommunicators that members of both the Police and the Highway Department bargaining units currently enjoy.

(4) In connection with *the interests and welfare of the public*, that the Arbitrator should consider both tangible benefits, i.e., dollar and fringe benefits, and intangible benefits such as employee perception that their efforts are appreciated and recognized.

(a) Accordingly, that the Arbitrator should consider the intangible factor of department morale and its corresponding effect upon the interests and welfare of the public.

(b) That while the Village has urged that the Association's final offer is "too rich" and asks for "too much," it should be recognized that the Village proposed elimination of compensatory time off from the agreement could cost in excess of $16,500.00, or more than three times the $5,338.00 remaining difference between the costs of the parties' final offers.

(c) That the Villages's final offer *passes the buck* to the Association; rather than hiring an adequate number of employees to staff the dispatch center, it has elected to attempt to force the Association into making a policy decision on the Village's behalf, in connection with the proposed option to eliminate or to retain Section 14.02.

(d) That while the Employer is offering the Association membership an opportunity to have three permanent shifts and two relief shifts, its proposed changes in Sections 15.01, 15.02 and 15.03 are inappropriate: that Section 15.01 is merely a *carrot*; Section 15.02 would impose significant new restrictions on the vacation time off, and would limit vacations to one person at a time; Section 15.03 negates seniority preference in working overtime, and would also be inconsistent with the outcome of a prior police arbitration.

(e) That Section 14.02 already gives the Employer complete control over compensatory time off, and it is not granted if it will either result in overtime for another employee or create a staffing problem. Therefore, that the Employer has nothing to lose and everything to gain in retaining the *compensatory time off language* in the successor agreement.

(5) That current staffing problems are due in large part to the Village's *unilateral decision to eliminate the part-time Telecommunicator*.

(a) That staffing levels and the use of compensatory time off are controlled and managed solely by the Employer.[1]

(b) That if the Employer wishes to run the department with inadequate staffing there is nothing that the Association can do to add new employees, and can merely question the wisdom of such action.

(c) That Association witness Patricia Bowen confirmed that current staffing problems did not exist when the Village had employed a part-time Telecommunicator.

(d) That Communications Supervisor Susan Mourey testified that she had requested an additional full-time Telecommunicator, only to have the position deleted from the 1997 budget.

(e) That while Germantown has elected to staff its department with seven full-time employees, no other comparable department uses fewer than 9 full-time employees; that Employer Exhibit 18 is incomplete, as it includes no full-

---

[1] Emphasizing the contents of Sections (J) and (M) of Article III, entitled **Management Rights**.

time dispatchers, and fails to indicate as follows: that Brown Deer has six dispatchers, including four full time and two part-time employees; that Muskego's six dispatchers include four full-timers and two records clerks who work two days per week as dispatchers; that Port Washington has seven dispatchers, including four full time and three part-timers.

(f) That while the Association may not be able to control the level of staffing within the communications center, its proposed new language in Section 12.04 is designed to protect members from abuse arising from improper staffing levels.

(g) That the seniority system for selecting shifts which currently exists in Article VI, Section 6.03 has been eroded by the Employer's assignment of four employees to the relief shift, thus allowing it the unfettered right to move them around without notice and without additional compensation; that Section 12.04 would provide for not more than two non-probationary employees to be designated as relief shift employees at any one time.

(h) Following completion of probation, that the Association's proposal would pick shifts by seniority with no more than two seniority employees subjected to irregular scheduling; that the proposed language would be nearly identical to that contained in the Germantown Police contract.

(i) That the Employer's opening statement referred to the Employer being forced to arbitrate a grievance over staffing procedure, and it claimed that the current staffing procedure dated back twenty-five years or more; that these representations are not factual, as is apparent from the *original grievance*, and the *briefs and the reply briefs of the parties*, submitted as part of the Association's brief.

(j) Prior to 1993, that the Employer maintained a part-time position, which provided stability in hours for full-time employees.[2] However, this stability was eliminated when the Village unilaterally eliminated the part-time position and designated four of the six full-time employees as "relief shift employees," who are now subject to last minute schedule changes.

(k) That certain supervisory testimony at the hearing actually favored the position of the Association on the matter of staffing.

(l) That while the Village alone has the ability to rectify staffing difficulties, the answer to the problem is to hire enough telecommunicators to adequately staff the department.

(m) That the Association proposed new language in Section 12.04, while not perfect, will help stabilize the work environment, reduce the erratic scheduling to two employees, and provide extra compensation where an employee is required to jump shifts more than once per week.

---

[2] Citing the contents of Article XV, entitled **Staffing Procedures**, which indicates that part-time employees would be called in for staffing vacancies.

(6) That the *Association's final offer is feasible.*

(a) That arbitral consideration of Employer Exhibit #27 shows that the Association's final offer would work; in this connection it illustrates appropriate scheduling with the use of two relief dispatchers out of a full complement of seven dispatchers.

(b) That the creation of a new Section 12.04, as proposed by the Association, is both workable and reasonable.

(7) That the Village of Germantown has the *financial ability to meet the Association's final offer.* In this connection that there is no evidence of *inability to pay,* that *if the Village is willing to eliminate the money saving option of compensatory time off it can well afford the $5,338.00 additional costs inherent in the Association's final offer,* spread over the three year life of the renewal agreement, and that the *Association's final offer will generate savings through reduced training costs and improved department morale.*

(8) That the Association proposed selection of external comparables contained in Association Exhibit #5, is more appropriate than those proposed by the Employer.

(a) That the Association has selected contiguous communities of similar size and population, with departments similar to the Village of Germantown.

(b) That certain of the comparables proposed by the Employer are neither close enough nor large enough to be considered comparable.

(c) That Arbitrator Vernon's rejection of Menomonee Falls as a comparable in prior interest arbitration proceedings between the Village and the Germantown Police Officers Association should not be determinative in these proceedings.

(d) That in formulating its recommendations the Association considered many arbitral awards, including a 1988 decision of the undersigned wherein he determined that Germantown was a primary comparable in interest arbitration proceedings involving the Village of Menomonee Falls and its Telecommunicators; accordingly, that the reverse should be true in the case at hand.

(e) That the Village's list of comparables is not definite and certain, in that it ignores the contiguous communities of Menomonee Falls and Mequon.

(9) That the *Association's final wage offer is more comparable* than that of the Village.

(a) That arbitral consideration of the contents of Association Exhibits #6A through #6J indicate that Germantown Telecommunicators were $1.86 per hour below the comparables, which has been reduced to a deficit of $1.70 per hour by 1995.

(b) That the Association's final offer will *slowly but surely* continue to whittle down the deficit; that either final offer will reduce the deficit to $1.64 by 1996, the Village's final offer will increase the deficit to $1.74 per hour by 1997.

(c) That the Association's proposed addition of new five year and eight year steps are reasonable, and justified by consideration of both external and internal comparables; that the high degree of turnover and the low seniority of those in the bargaining unit minimize the dollar cost of the proposals.

(d) That the Village had voluntarily granted higher internal wage increases within other bargaining units than it offered to the Telecommunicators; if the Village prevails, therefore, those in the bargaining unit will lose ground internally.

(e) That the Association has provided historic wage comparisons among the comparables, which support arbitral selection of its final offer in these proceedings.

(10) That *hours of work are a mandatory item of bargaining.*

(a) That the Association seeks to put language into the agreement which codifies the status quo for the three regular shifts, and which gives the Chief of Police the option to establish two other relief shifts, if he so desires.

(b) That the Employer has agreed to similar language in the Police and in the Highway Department collective agreements, and arbitrators frequently place significant weight upon such *internal comparisons*, particularly in connection with certain policy or language components of collective agreements.

(c) That the Association is seeking neither to add to nor detract from the existing conditions of employment.

(11) That *both final offers are close to the cost-of-living index.*

(a) That the Village has exceeded the 3.3% cost-of-living figures shown in Association Exhibit #10 and in Village Exhibit #5, in its police settlement.

(b) That all external comparables listed in Association Exhibit #6B, exceed the 3.3% increases in COL.

(c) That the Village offer would provide the majority of the bargaining unit with 3.0% increases, somewhat below the recent 3.3% level of increase in COL.

(d) In accordance with the above, that the cost-of-living criterion should not be accorded determinative weight in the final offer selection process.

(12) That the *overall compensation presently received by the Telecommunicators is, at best, average* when compared to comparable communities.

(a) That the Employer has restricted its exhibits in this area to *holidays, personal days, WRS,* and *compensatory time off.*

(b) That when the comparisons are expanded upon to include *sick leave, vacations, longevity,* and *health insurance* as shown in Association Exhibit #8, it is apparent that the *current overall level of benefits* does not offset the low wages paid to Telecommunicators by the Employer.

In summary and conclusion, the Association urges the following preliminary conclusions relative to its final offer: that it is within the lawful authority of the Employer; that the stipulations of the parties contain little or no financial burdens for the Employer, and generally mirror the internal comparables; that it is consistent with the interests and welfare of the public; that current staffing problems are due, in large part, to the Employer's decision to eliminate the part-time telecommunicator; that it is a feasible one; that the Communications Supervisor agrees with the Association's final offer relative to relief shifts and scheduling; that the Employer has the financial ability to meet the costs of the Association's final offer; that the Association's selection of comparables is more appropriate than that of the Employer; that the Association's final wage offer is supported by consideration of the external comparables; that hours of work are a mandatory subject of bargaining; that both final offers are close to the cost-of-living index; and that the overall compensation received by Germantown Telecommunicators is, at best, average. On the basis of all of the above, that the final offer of the Association is favored by arbitral consideration and application of the various statutory criteria, and that it should be selected by the Arbitrator and ordered implemented by the parties.

In its reply brief the Association principally emphasized what it characterized as various *distortions contained in the Employer's initial brief*, principally consisting of the following matters: (1) the reference at page 4 that it would have no objection if the Arbitrator chose to disregard the proposed "tradeoff" contained in its offer; (2) the contention that it had taken on more costs by hiring additional full-time dispatchers; (3) the supplying of inaccurate costing data and meaningless numbers to the Arbitrator; (4) the attribution of an additional 1.12% in spurious costs to the Association, principally arising from overtime charges flowing from its decision to run the department shorthanded; (5) its characterization of agreeing to maintain the status quo on working hours as a "major concession"; (6) its claim that the WRS system is an above average benefit; (7) its assertion that a drive through the City of Brookfield would reveal dramatic

differences from Germantown; (8) the claims first raised in its brief that the taxpayers in Germantown "are already strapped" and questioning their ability to meet the Association's offer; (9) its malicious claim that a member of the bargaining unit had tried to leave but couldn't get hired elsewhere, and its lack of a true commitment to retaining long service employees; (10) its distortion of the fact that only two employees will immediately benefit from the Association proposed eight year wage step; (11) its claim that the Germantown Police Officers had settled for a 2.0% increase; and, (12) its assertion that the Association's final offer contained an unworkable provision.

POSITION OF THE VILLAGE

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

(1) Preliminarily, that the parties are in dispute on wages, shift hours, relief shift positions and staffing procedures.

(a) The Association's final wage offer calls for the following: a 3.5% increase effective January 1, 1996, with a new five year step of 1.0% over the current four year step; a 3.5% increase effective January 1, 1997, with a new eight year step 1.0% over the five year step; and a 4.0% increase effective January 1, 1998; the Village's final wage offer calls for the following: a 3.0% increase effective January 1, 1996, with a new five year step equal to $400.00 over the four year step; a 3.0% increase effective January 1, 1997; and a 3.5% increase effective January 1, 1998.

(b) The Association's proposed shift hours language would "lock in" the precise hours and shifts as they are currently set by the Village; the Village proposes to retain the current hours and shifts for the term of the renewal agreement.

(c) The Association proposes that the total number of relief shift employees be limited to two, with the other employees having regular shifts; the Village proposes to retain the status quo, unless the Association opts for its alternative proposal.

(d) The Association proposed to change the current language regarding staffing procedures, so that vacant shifts are offered to all employees as a voluntary overtime shift before it is actually assigned to an employee; the village proposes to maintain the current language regarding the staffing of vacant shifts, unless the Association opts for its alternative proposal.

(e) The Village believes that its "unique" offer of an alternative to the Association both enhances its final offer, and enhances collective bargaining by giving the

parties more options. *Nonetheless, however, the Village would not object if the Arbitrator chose to analyze this case as if the alternative did not exist, and that the Village's offer was to simply maintain the status quo on scheduling.*

(2) That the evidence presented by the parties consists basically of the following.

(a) Both parties presented exhibits relating to *external comparables,* but remained apart on the makeup of the primary external comparison group; the Association proposes Brookfield, Menomonee Falls, Mequon, New Berlin and Washington County as the primary comparables, while the Village proposes the same comparables identified by Arbitrator Gil Vernon in a 1994 interest arbitration between the Village and the Police Officers.

(b) That application of the *comparison criteria* raises issues relating to arbitral application of the *interests and welfare of the public* and the *financial ability of the unit of government to meet the costs of any proposed settlement* criteria, with the Association emphasizing significant population growth and housing starts relative to its proposed comparables, and the Village emphasizing evidence showing that its household incomes and property values remain low compared with its present taxes, and that its population growth and housing starts have not increased its household incomes and property values.

(c) The Village submitted data regarding the proposals and, using the cast-forward method, costed the Village wage proposal at 3.9% for 1996, 5.93% in 1997 and 6.0% in 1998, and the Association's wage proposal at 4.23% in 1996, 6.72% in 1997 and 6.44% in 1998; it urges that the Association's proposal to reduce the number of relief shift employees to two would result in additional costs to the Village of 1.12% per year.

(d) Both parties submitted cost-of-living data showing that average increases over the past five years have been under three percent per year; the Village also submitted a summary of the findings of the Senate Finance Committee's Advisory Commission to Study the CPI, which estimated that it is overinflated by .8 to 1.6 percent.

(e) The Association presented excerpts from various external in support of various elements of its final offer.

(f) The Association presented witness Patricia Bolen who testified in support of its desire for established hours of work; the Village is willing, however, to establish that current hours will remain unchanged for the duration of the current agreement.

(g) Both parties presented arguments regarding each proposed system of assigning vacant shifts, including the use of relief shift employees. The Association urges that the current system is rife with problems, but no grievances were filed prior to these impasse procedures, and it additionally urges that the prior provision is obsolete because it does not apply to part-time employees; that while the Village currently uses no part-time employees, it has not given up its right to do so in the future.

(h) The Village also emphasizes its agreement to assume the full contribution to the Wisconsin Retirement System, a commitment shared only by one other of the Association's proposed comparables, Brookfield; that it is also committing $400,000 for the installation of a technologically advanced computer system which will ease and streamline the jobs of the dispatchers.

(3) That the Village's final offer is more appropriate under *various statutory criteria*, principally including the following factors: its taxpayers are already taxed at comparatively high rates and can ill afford to have them raised any higher; its wages are comparable in both the metropolitan Milwaukee area, as a whole, and among comparable communities; its proposal to maintain the status quo with respect to other disputed provisions is far more workable than adopting the Association's vague and over-reaching language.

(4) That the *interests and welfare of the public* and the *financial ability of the unit of government to meet the costs of the settlement*, favor the selection of the final offer of the Village.

(a) That viewing the factor of *ability to pay* as a black and white issue is not rational, in that any community's tax payers could be commanded to pay just a little bit more; that this factor should be measured in relative terms.

(b) That significant demographic differences represented in Association Exhibit #5G are quite apparent, and show that while the Village's average property value and average household income are low, its taxpayers are already paying significant taxes: that these figures show that Germantown's taxpayers are already being pressed more than the Association's proposed comparables.

(5) That arbitral consideration of the *external comparables* favor the selection of the final offer of the Employer.

(a) That the Association proposed comparables differing significantly, in various important respects, from the Village of Germantown.

(b) That the Village proposes continued use of the external comparables previously determined in arbitration to be most appropriate.[3]

(c) That arbitrators generally respect prior arbitral determinations of comparability.[4]

(d) That review of the wages paid by the primary external comparables favors the selection of the final offer of the Village in these proceedings: that Germantown's proposed 1996 starting and maximum wage rates rank second among the comparables previously selected by Arbitrator Vernon; that when compared to all Milwaukee area communities for which data is available, Germantown's proposed 1996 starting and maximum wages rank almost exactly in the middle.

---

[3] Citing the contents of Village Exhibit 16, at page 7.

[4] Citing *the decision of Arbitrator Fred Dichter* in County of Clay, 107 LA 527 (1996).

(e) That data regarding 1997 and 1998 are incomplete, with two of five not yet settled for 1997 and only one settled for 1998; that when viewed in conjunction with the CPI data, however, the Village believes its proposed increases of 3.0% and 3.5% for the two years may be above the ranges of the external comparables.

(f) In any event, that the actual costs of the Associations proposal, 5.35% in 1996, 7.88% in 1997 and 7.56% in 1998, would be outside even the upper range among the Association proposed comparables.

(g) That the turnover arguments advanced by the Association at the hearing are not borne out by the longevity statistics of the current staff of six telecommunicators: that two have been with the department over ten years, two others for more than three years, and one for just under three years; that five would benefit from the Association proposed five year and eight year wage steps during the term of the renewal agreement; that these data simply do not justify any need for so-called "catch up."

(h) That the Association has ignored the Village's proposal to add a five year step to the salary schedule with $400 increases, which is higher than the Association proposal. Since the Village is already competitive at the start rate, this will improve its standing at the top rate, and will also reward its long term employees.

(i) That the Association presented no evidence justifying a traditional catch up argument, even if its proposed comparables were used; instead it merely urges that if across-the-board percentages are used, Germantown may lose ground.

(j) That in the area on non-wage issues, the Association presented only portions of the contracts of selected comparables, in attempting to show that its proposals are comparable; that such an out-of-context and misleading approach, however, fails to prove comparability.

(k) That the Association proposed new vacancy staffing procedure which first calls for volunteers, in order of seniority, before such vacancy can be filled with the least senior telecommunicator. That this proposal is, however, unworkable as written, and has almost no support even among the Association proposed comparables.

(l) That the Association proposed establishment of hours is not significantly supported among its proposed comparables, and the Village has also demonstrated its desire to accommodate the employees on this issue.

(6) That arbitral consideration of *internal comparisons* also favors the selection of the final offer of the Village.

(a) That while the Police Officer's contract provides for 3.5% increases in 1996 and 1997, and a 4.0% increase in 1998, this settlement was accompanied by adoption of a two tiered wage structure, providing lower salaries for all new employees; accordingly, that the Village offer of 3% increases in 1996 and 1997, a 3.5% increase in 1998, and a $400 five year step is more in line with the police settlement than the Association's wage proposal.

(b) That the Association presented no other internal wage comparisons, and that the wage increases for all non-represented employees on the Village's payroll was 3.5% in 1996 and 2.5% in 1997.

(c) That the internal wage increases within the Village are simply a far cry from the Association's total proposal for telecommunicators which would raise Village costs by 5.35% in 1996, by 7.88% in 1997 and by 7.56% in 1998.

(d) That the only non-wage internal comparisons submitted by the Association involved the staffing of vacancies in shifts under the 1996-1998 police officer's contract; that this provision is similar to the provision currently in place for the telecommunicators, in that the department is not required to first look for volunteers prior to assigning a vacancy to an off-duty officer.

(e) That while the Association did not submit information regarding the hours of work for Germantown DPW employees and police officers, the DPW contract provides a one and one-half to two hour period within which a shift must start, and while the police contract lists shift hours, they are the hours previously chosen by management as best suited to the needs of the department.

(f) That while the Village is agreeable to not modify the current schedule for the term of the agreement, it should not be bound forever.

(g) That while the police agreement provides for three of twenty-eight officers to be assigned to relief shifts, the telecommunicator situation is fundamentally different because they have virtually no restrictions on the use of vacation time and compensatory time.

(h) That the Village has agreed to implement a system with two of seven telecommunicators scheduled for relief shifts, but in order to feasibly do so, has proposed eliminating the use of compensatory time off and requiring vacation time to be scheduled in advance; that while the telecommunicators have indicated their absolute unwillingness to give up their flexibility in taking time off, this goes hand in hand with flexibility in scheduling. In other words, there must be an adequate number of employees to fill vacancies, or they must be filled by permanent employees at significant overtime cost to the Village.

(i) That Telecommunications Supervisor Sue Mourey testified that she had examined the 1996 schedule and determined that the additional overtime costs to the Village of the Association's proposal would have been $1,964, an average of $280 per employee, or the equivalent of 1.12% per year, in addition to the across-the-board increases; that such a cost increase is simply unjustified on the basis of internal comparisons.

(7) That cost-of-living considerations favor the position of the Village on the following bases.

(a) That national cost-of-living increases over the past five years have been consistently below 3%, and a Senate Finance Committee had estimated that the CPI significantly overstates actual COL increases.

(b) That either with or without the referenced overstatement, the higher Association proposed wage increases are not justified by cost-of-living considerations; that even the Village's proposal exceeds COL increases.

(8) That consideration of *total compensation* favors the position of the Village, particularly in consideration of its payment of the full costs of WRS, its 15 days of sick leave and 14 holidays and personal days, its payment of the costs of dispatchers uniforms, and its payment of 100% of the health insurance costs, with no deductible and a modest co-pay.

(9) That miscellaneous additional factors favoring selection of the final offer of the Village, include its recent installation of a $400,000 computer system designed to make the Telecommunicators' job easier and more efficient, ambiguities contained in the Association proposed language changes, and various unanswered questions relating to the installation of such language.

That the final offer of the Employer is favored by consideration of the appropriate comparables and the metropolitan Milwaukee area as a whole, the fact that it is both reasonable and appropriate, its generous non-wage benefits, and the total compensation and benefits already available to its Telecommunicators. That the final offer of the Association is too generous for a community with no legitimate need to catch-up, its language proposals would entail significant operational problems and costs, and it has failed to appropriately support these proposals.

In its reply brief the Village challenged the validity of the positions advanced by the Association in four principal areas: (1) certain of its arguments relating to *external comparability*, including its ignoring of the "*greater weight*" recently mandated for local economic conditions, its citation of a prior decision of the undersigned involving the Village of Menomonee Falls, and its generation of certain costing data, and its use of certain data not in the record; (2) certain of its arguments relating to *internal comparability*, including the matter of Employer credit for WRS changes, and the significance of the negotiated wage increases within the Police Officers bargaining unit which accompanied the adoption of a two tiered wage system; (3) certain of its positions relating to *scheduling*, including the cost implications of elimination of comp time, the significance of a pending grievance, and arguments questioning the competence of a supervisor; and certain of its arguments underlying its "*real agenda*" *of hiring more workers*.

FINDINGS AND CONCLUSIONS

The underlying dispute extends to both wages and to proposed changes in contract language by the parties, which considerations justify some preliminary observations by the undersigned similar to those offered in various prior Wisconsin statutory interest arbitration proceedings, and relating to the *nature of the interest arbitration process*, the *normal application of the statutory arbitral criteria in Wisconsin*, including the makeup of the primary intraindustry comparison group, and the *significance of the status quo ante in the final offer selection process.* Thereafter, the various *the final offers of the parties* will be considered, and the more appropriate of the two will be selected and ordered implemented by the parties.

The Nature of the Interest Arbitration Process

Interest arbitrators operate as extensions of the parties' normal collective bargaining process, and their basic role is to attempt to put the parties into the same position they would have occupied but for their inability to reach complete agreement at the bargaining table. In attempting to do so, the interest neutral will closely examine the parties' *past practice* and their *negotiations history* (both of which fall well within the scope of Section 111.70(4)(cm)(7r)(j) of the Wisconsin Statutes), in the application of the other statutory criteria. This principle is addressed in the following excerpt from the authoritative book by Elkouri and Elkouri:

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

> think reasonable negotiators, regardless of their social or economic theories might have decided them in the give and take of bargaining..."[5]

Due to the nature of the interest arbitration process, including the *final offer format*, it may be very difficult, if not impossible, to render an arbitral decision identical to the settlement the parties might have or should have reached at the bargaining table, which is particularly true where, as in the case at hand, the impasse includes both *economic* and *non-economic* or *language items*.

The Wisconsin Legislature has recently mandated that statutory interest arbitrators place the ***greatest weight*** upon "...*any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer.*" It has also provided for ***greater weight*** to be placed upon "...economic conditions in the jurisdiction of the municipal employer", than to the remaining arbitral criteria contained in Section 111.70(4)(cm)(7r) of the Statutes. Accordingly, if either or both of the above factors apply to a particular dispute, they must be accorded the appropriate statutory weight; conversely, if neither of the above factors particularly apply in a dispute, the remaining criteria will, of course, command *their normal weight* in the arbitral decision making process.[6] The requisite *limitations on expenditures or revenues* must be present to trigger the application of the "*greatest weight*" criterion. The "*greater weight*" criterion presumably can apply in at least two ways: *first*, by ensuring that an employer's economic conditions are fully considered in the composition of the primary intraindustry comparables; and, *second*, by ensuring that the economic costs of a settlement are fully considered in relationship to the "..economic conditions in the jurisdiction of the municipal employer." Stated more simply, *like employers should be compared to like employers*, and *undue*

---

[5] Elkouri, Frank and Edna Asper Elkouri, How Arbitration Works, Bureau of National Affairs, Fourth Edition - 1985, pp. 104-105. (footnotes omitted)

[6] These priorities were adopted by the Legislature in 1995 Wisconsin Act 27, made applicable to Section 111.70(4)(cm)(6) *interest arbitration petitions* filed on or after July 29, 1995.

and disparate economic burdens should not be placed upon an employer without appropriate statutory consideration of comparable economic conditions; accordingly, application of this criterion does not automatically require arbitral selection of the least costly of two alternative proposals, without arbitral consideration of the remaining statutory criteria.

In addressing the remaining arbitral criteria, the undersigned notes that it is widely recognized by interest arbitrators that *comparisons* are normally the most frequently cited, the most important, and the most persuasive of the various conventional arbitral criteria, and that the most persuasive of these are normally the so-called *intraindustry comparisons.*[7] These considerations are addressed as follows in the respected book by Irving Bernstein:

> "Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the Union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill...Arbitrators benefit no less from comparisons. They have the appeal of precedent...and awards, based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public.
>
> * * * * *
>
> "a. *Intraindustry Comparisons.* The intraindustry comparison is more commonly cited than any other form of comparison, or, for that matter, any other criterion. Most important, the weight that it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards.
>
> * * * * *
>
> A corollary of the preeminence of the intraindustry comparison is the superior weight it wins when found in conflict with another standard of wage determination. The balancing of opposing factors, of course, is central in the arbitration function, and most commonly arises in the present context over an employer argument of financial adversity."[8]

---

[7] While the terms *intraindustry comparisons* derive from their long use in the private sector, the same principles of comparison are used in public sector interest impasses; in such situations, the so-called *intraindustry comparison groups* normally consist of other similar units of employees employed by comparable governmental units.

[8] Bernstein, Irving, The Arbitration of Wages, University of California Press (Berkeley and Los Angeles), 1954, pg. 54, 56, and 57. (footnotes omitted)

It is next noted that Wisconsin interest arbitrators, when faced with demands for *change in the negotiated status quo ante*, such as certain of the language proposals in these proceedings, will normally require the proponent of change to establish a *very persuasive basis for such change*, generally by showing that a *legitimate problem exists* which requires attention, that the disputed proposal *reasonably addresses the problem*, and that the *proposed change is accompanied by an appropriate quid pro quo*.

As referenced above, recent statutory changes mandate arbitral consideration of two new factors, one of which may command the *greatest weight*, and the second of which may command *greater weight* than the traditional arbitral criteria; and in arguing their respective positions, the parties principally emphasized the *interests and welfare of the public*, various *comparisons*, recent changes in *cost-of-living*, and certain *overall criteria*.

In examining the record in these proceedings, the undersigned first notes the presence of no limitations on expenditures or revenues sufficient to trigger the application of the *greatest weight criterion*.

What next of the parties' disagreement over the composition of the *primary intraindustry comparison group*? In a prior interest arbitration decision involving the Village and the Police Officers' bargaining unit, Arbitrator Vernon fully described his methodology and rationale and definitively determined that the primary intraindustry comparison group should consist of the following communities: Brown Deer, Cedarburg, Port Washington, Grafton, Muskego and Germantown.[9] The degree to which interest arbitrators are reluctant to modify intraindustry comparison groups previously established and used by the parties, is very well described in the following additional excerpts from Bernstein's book:

> "This, once again, suggests the force of wage history. Arbitrators are normally under pressure to comply with a standard of comparison evolved by the parties and practiced for years in the face of an effort to remove or create a differential. When the Newark Milk Company engineers asked for a higher rate than in New York City, the

---

[9] See *the decision of Arbitrator Gil Vernon* in Village of Germantown (Police Department), Case 28, No.48268, MIA-1753 May 13, 1994), at pages 7 and 8, a copy of which comprises Employer Exhibit #16.

arbitrator rejected the claim with these words: 'Where there is, as here, a long history of area rate equalization, only the most compelling reasons can justify a departure from the practice."

* * * * *

"The last of the factors related to the worker is wage history. Judged by the behavior of arbitrators, it is the most significant consideration in administering the intraindustry comparison, since the past wage relationship is commonly used to test the validity of other qualifications. The logic of this position is clear: the ultimate purpose of the arbitrator is to fix wages, not to define the industry, change the method of wage payment, and so on. If he discovers that the parties have historically based wage changes on just this kind of comparison, there is virtually nothing to dissuade him from doing so again..."[10]

One application of the above described principles was addressed, as follows, by the undersigned in a prior Germantown School District interest arbitration:

"In applying the above described principles to the case at hand, the Arbitrator notes that neither party to a dispute can normally expect to convince an interest neutral that the historical intraindustry comparison(s) previously used by the parties, should be abandoned or minimized merely on the basis of one party's subjective preference for an alternative set of comparisons, which it simply feels might more persuasively support its final offer! While it may be appropriate, in unusual cases, for an arbitrator to adopt different intraindustry comparisons than those historically used by the parties, *the proponent of change must normally produce extremely persuasive evidence and argument to justify such a change!*[11]

In applying the above principles to the dispute at hand, the undersigned notes that Arbitrator Vernon's *failure to specifically articulate the considerations underlying his rejection of Menomonee Falls* as a member of the *primary intraindustry comparison group*, does not detract from the fact of such exclusion, and the Association's reliance upon this consideration falls far short of constituting the requisite "*extremely persuasive evidence and argument*" necessary to justify a change in the composition of this primary intraindustry comparison group.

What next of the Association's argument that the undersigned should include the Village of Menomonee Falls as a primary comparable, in consideration of my inclusion of Germantown as a primary comparable in a prior

---

[10] The Arbitration of Wages, pages 63, 66. (footnotes omitted)

[11] See *the decision of the undersigned* in Germantown School District, Case 28, No. 52716, INT/ARB 7656 (July 3, 1996), at page 16.

interest arbitration involving Menomonee Falls Dispatchers?[12] In this connection, it is noted that both parties in the prior proceeding were in full agreement that Germantown fell within the *primary intraindustry comparison* group, but the bargaining history of other parties is simply not determinative of the composition of such a group in the case at hand!

On the basis of the above, the undersigned has concluded that the *primary intraindustry comparison group* should continue to consist of the municipalities previously identified by Arbitrator Vernon, i.e., Brown Deer, Cedarburg, Grafton, Muskego, Port Washington and Germantown.[13]

What next of the potential application of the *greater weight criterion* in these proceedings? Arbitrator Vernon, in previously determining the composition of the primary external comparison pool, determined that the comparables were very close to one another in terms of *populations, local taxes, average tax bills, average property values, average income and equalized values*, observing, in part, as follows:

> "This data demonstrates a remarkable similarity between these communities and Germantown, individually and collectively. Geographically, they are all Milwaukee collar communities removed from the central city by approximately the same distance. They are also very similar in taxpayer profiles which is particularly relevant since it is the taxpayer who ultimately foots the bill for police services.
>
> There were a variety of reasons why the other municipalities suggested by the respective Parties were rejected. The following were rejected as a result of being disproportionately large or rich in terms of staff, population, tax base, tax bill, property values, and/or income: Brookfield, New Berlin, Whitefish Bay, and Franklin. Hales Corners is too small in many respects."[14]

In selecting the same *primary intraindustry comparison group*, therefore, the undersigned has already accorded consideration to the *greater weight criterion*, by fully considering the Employer's economic conditions and those of the comparables in determining the composition of this group.

---

[12] Citing the 4/88 decision of the undersigned in Village of Menomonee Falls, Case No. 39141, INT/ARB-4494 (August 8, 1988).

[13] Although Arbitrator Vernon's decision involved the Police Officers' bargaining unit, rather than one composed of Telecommunicators, it involved the same parties, and no persuasive arguments have been advanced as to why the primary intraindustry comparison group in those proceedings should differ from that applicable in the case at hand.

[14] See Employer Exhibit #16 at pages 7 and 8.

In next addressing comparative *telecommunicator pay rates within the primary comparison group*, the undersigned notes as follows:

(1) Germantown Dispatchers had an entry level hourly wage rate of $10.18 in calendar year 1995, as compared to an average of $9.87 per hour for the remaining five employers, and they ranked second to Brown Deer in this respect; they would enjoy an entry level wage rate of either $10.54 per hour under the final offer of the Association, or $10.49 per hour under the final offer of the Village in 1996, as compared to an average of $10.25 per hour for the remaining five employers, and they would continue to rank second to Brown Deer under either of the two final offers.[15]

(2) Germantown Dispatchers had a maximum hourly wage rate of $12.36 in calendar year 1995, as compared to an average of $11.87 per hour for the remaining five employers, and they ranked second to Brown Deer in this respect; they would have a maximum hourly wage rate of either $12.92 under the final offer of the Association, or $12.93 under the final offer of the Employer in 1996, as compared to an average of $12.37 per hour for the remaining five employers, and they would continue to rank second to Brown Deer under either of the two final offers.[16]

(3) Pursuant to the above, therefore, the Association proposes .05¢ per hour more at the entry level for 1996, the Employer proposes .01¢ per hour more at the maximum for 1996, and under either offer the Germantown Dispatchers would retain their second ranking among the primary external comparables.

The above described wage comparison data are very close for 1996, but neither party introduced similar data for 1997 and/or 1998, the second and third years of the renewal agreement, thus justifying two conclusions: *first*, that the absence of complete external comparison data reduces the weight which otherwise might be placed upon the intraindustry comparison criteria; and, *second*, that the closeness of the two wage offers and the fact that either could be justified by consideration of the economically comparable intraindustry comparison pool, establish that the *greater weight criterion* is not entitled to determinative weight in connection with the wage component of the underlying impasse.

On the basis of the above, the undersigned has preliminarily concluded that neither the intraindustry wage comparison criterion nor the greater weight criterion significantly favors the wage component of the final offer of either party.

---

[15] See the contents of Employer Exhibits #19 and #20.

[16] See the contents of Employer Exhibits #21 and #22.

In next considering the *cost-of-living criterion*, there are two determining factors: *first*, both parties cited the fact that recent increases in the CPI have been below 3% per year,[17] with the Employer also urging that even this figure somewhat overstated the actual rates of increase; and, *second*, a sufficiently accurate costing of the two final offers, shows yearly average increases in excess of 5% under the Village's offer, and in excess of 5.5% under the Association's offer. Without unnecessary elaboration, therefore, and without regard to the accuracy of the CPI, it is clear that the cost-of-living criterion favors the wage component of the final offer of the Village in these proceedings.

In next considering the language components of the final offers, the *undersigned notes that the Village's offer proposes two language changes*: *first*, the addition of a new Section 12.03, providing for no change in shift hours during the term of the renewal agreement; and, *second*, its unusual and probably fanciful proposed addition of new Sections 15.01, 15.02 and 15.03, in exchange for the Association agreeing to *delete* Section 14.02, which reserves various employee rights to control their use of compensatory time off.[18] Since the Association rather clearly indicated that it had no intention of renouncing the employees' Section 14.02 rights, the language portion of the Employer's final offer really amounts to only a commitment, for the life of the renewal agreement, to no change in shift starting times during the life of the agreement. In contrast to the final offer of the Village, the Association is seeking very substantial language changes, generally described as follows: *first*, restrictions on regular shift hours and relief shift hours; *second*, assignment to relief shifts on the basis of seniority, and certain other related changes; and, *third*, various restrictions and limitations on staffing and overtime assignment procedures, including greater use of seniority.

---

[17] CPI information for the years in question is contained in Association Exhibit #10 and Employer Exhibit #5.

[18] As emphasized by the Association, the seriousness of the Employer's *tradeoff language proposal* is called into question by its statement at page 4 of its initial brief that it "...would not object if the arbitrator chose to analyze this case as if that alternative didn't exist, and the Village's offer was to maintain the status quo on scheduling."

The proponent of change in the *status quo ante* is asking an arbitrator to reach a decision that is inconsistent with the parties' bargaining history, and he or she is generally required to establish *a very persuasive case* in support of such a proposal. In interpreting and applying Section 111.70(4)(cm)(7) of the statutes, Wisconsin public sector interest arbitrators have occasionally recognized the need for innovation or change where its proponent had persuasively established that a *legitimate problem existed* which required attention, that *the proposal reasonably addresses such problem*, and where *an appropriate quid pro quo* had typically been provided for the change. The rationale for the latter requirement is simply that neither party should achieve the elimination of or a substantial change in a previously negotiated policy or benefit, without having advanced something equivalent to what would normally have been required at the bargaining table.

In applying the above standards to the language components of the final offers of the parties, the Arbitrator notes that the Employer is not really proposing a change in the shift starting time, in that it is merely agreeing to make no change during the life of the agreement.[19] By way of contrast, the Association is proposing substantial and significant changes, and even if its arguments for such changes were construed as having established the existence of a *substantial problem*, the record falls far short of establishing that the *proposals reasonably address any such problem*, and/or there is *no apparent quid pro quo* for such proposed changes. While it is quite clear that the Parties have ongoing disagreements as to the reasonableness of the Employer's staffing decisions, and/or some of its work scheduling practices, the interest arbitration process is not a completely effective forum within which to address such concerns.

---

[19] This subject has apparently been a long standing "bone of contention" between the parties in the past and, *by way of dicta*, the undersigned notes that he does not construe the Employer's commitment not to change shift starting times during the life of the agreement, as determinative of any right to have either unilaterally done so under the prior agreement, or to unilaterally do so under a future agreement. If such a unilateral Employer right had been implicit in the Village's proposal, it would have been required to establish the requisite persuasive case for such a change in the negotiated status quo ante!

On the above described bases, the Impartial Arbitrator has preliminarily concluded that the Association's failure to have established the prerequisite *very persuasive case for its proposed changes* in the negotiated status quo ante, clearly and strongly favors the selection of the final offer of the Village in these proceedings.

In next considering the *interests and welfare of the public criterion*, the parties principally emphasized two considerations: *first*, the perceived quality of telecommunications service to the public which would flow from arbitral selection of one offer versus the other; and, *second*, the relative costs to the public of supplying such services. In these connections both parties are correct in that there is a public interest in receiving high quality public service, and also in paying a reasonable and appropriate amount for such services. The weight placed upon this factor has varied greatly with individual circumstances, however, and it has historically been assigned determinative weight in the final offer selection process under only two sets of circumstances: *first*, where an employer has established an absolute inability to pay, in which case it normally takes precedence over all other arbitral criteria; and, *second*, where the selection of one of the final offers would clearly necessitate a disproportional or unreasonable effort on the part of an employer. The second of these factors was addressed by the Legislature in the "greater weight" criterion discussed above, and there is no suggestion or claim that the Employer lacks the ability to fund either of the two final offers. Accordingly, and while the interests and welfare of the public criterion may appropriately be argued to favor the position of each party in certain respects, it does not significantly favor selection of the final offer of either party in these proceedings.

Summary of Preliminary Conclusions

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

(1) The primary focus of a Wisconsin interest arbitrator is to attempt to put the parties into the same position they would have occupied but for their inability to achieve a complete settlement at the bargaining table. Due to the nature of the interest arbitration process, including the final offer format, it may be difficult, if not impossible, to render an arbitral decision identical to the

settlement the parties might have or should have reached at the bargaining table.

(2) The Wisconsin Legislature has recently mandated that interest arbitrators are conditionally required to apply a *greatest weight* and/or a *greater weight criterion*, and if either or both apply to a particular dispute they must be accorded the appropriate statutory weight. Although it has not prioritized the remaining arbitral criteria, the *comparison criterion* is normally the most important and persuasive of these, and the so-called *intraindustry comparisons* are normally regarded as the most important of the various comparisons.

(3) The *proponent of change in the negotiated status quo ante*, such as certain of the language proposals in issue in these proceedings, must normally make a *very persuasive case* for such changes, basically by showing that *a legitimate problem exists* which requires attention, and that *the proposed change is accompanied by an appropriate quid pro quo*.

(4) The application of those arbitral criteria principally governing the dispute at hand, are described as follows:

(a) There are no limitations on expenditures or revenues sufficient to trigger the application of the *greatest weight criteria*.

(b) The *primary intraindustry comparison group* for use in these proceedings consists of the following municipalities: Brown Deer, Cedarburg, Grafton, Muskego, Port Washington and Germantown.

(c) In selecting the *primary intraindustry comparison group* the undersigned accorded consideration to the *greater weight criterion*, by fully considering the Employer's economic conditions in determining the composition of this group.

(d) Neither the *intraindustry wage criterion* nor the *greater weight criterion* significantly favor the wage component of the final offer of either party in these proceedings.

(e) The *cost-of-living criterion* clearly favors the final offer of the Village.

(f) The failure of the Association to establish the requisite *very persuasive case* for its substantial and significant proposed *changes in the status quo ante*, clearly and strongly favors the selection of the final offer of the Village in these proceedings.

(g) The *interests and welfare of the public criterion* does not definitively favor the selection of the final offer of either party in these proceedings.

Selection of Final Offer

Based upon a careful consideration of the entire record in these proceedings, including arbitral consideration of all of the statutory criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes in addition to those elaborated upon above, the Impartial Arbitrator has preliminarily

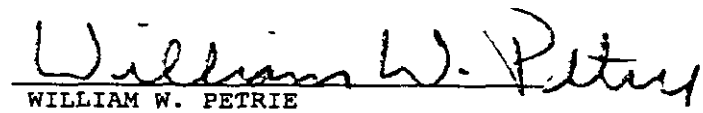
concluded that the final offer of the Village is the more appropriate of the two final offers, and it will be ordered implemented by the Parties.

AWARD

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

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

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



WILLIAM W. PETRIE
Impartial Arbitrator

June 21, 1997