

BEFORE THE ARBITRATOR

In the Matter of the Petition of

THE LABOR ASSOCIATION OF
WISCONSIN, INC.

Case 64 No. 57337
MIA-2254

Dec. No. 29632-A

For Final and Binding Arbitration
Involving Law Enforcement Personnel in
the Employ of

Heard: 8/25/99
Record Closed: 12/8/99
Award Issued: 2/15/00

VILLAGE OF GREENDALE

Sherwood Malamud
Arbitrator

APPEARANCES:

Patrick J. Coraggio and Kevin W. Naylor, Labor Consultants,
Labor Association of Wisconsin, Inc., 2825 N. Mayfair Rd.,
Wauwatosa, Wisconsin 53222, appearing on behalf of the
Association.

Davis & Kuelthau, S.C., Attorneys at Law, by Roger E.
Walsh, 111 E. Kilbourn Avenue, Suite 1400, Milwaukee, Wisconsin
53202, appearing on behalf of the Municipal Employer.

ARBITRATION AWARD

Jurisdiction of Arbitrator

The Labor Association of Wisconsin, Inc. for and on behalf of the Greendale Professional Police Association, hereinafter the Association, and the Village of Greendale, hereinafter the Village or the Employer, reached an impasse in their negotiations for a successor to the 1996-98 Collective Bargaining Agreement. The parties selected and on June 21, 1999, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to determine this dispute pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act. Hearing in the matter was held on August 25, 1999, at the Village's Police Department in Greendale, Wisconsin. Post-hearing briefs and reply briefs were received by the Arbitrator and the record in the matter was closed on December 8, 1999. The Award is issued pursuant to Sec. 111.77(4)(b) form 2, in that:

The Arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

SUMMARY OF THE ISSUES IN DISPUTE

Introduction

Both the Village and the Association propose a successor agreement for calendar years 1999, 2000, and 2001. The Village of Greendale proposes to increase the wage rates of 15 Police Officers, 2 Detectives and 2 Juvenile Officers by 2.95% effective January 1 in each year of the three-year term of the successor Agreement. In the second year of the agreement, the Employer proposes to increase the clothing allowance by \$20 to \$470 for all employees other than new employees to the department and in 2001 to increase the clothing allowance by an additional \$10 to \$480.

The Association proposes to increase all salaries by 3.5%, effective January 1, 1999. Effective January 1, 2000, it proposes to increase the 1999 end rates by 3.25%. Effective January 1, 2001, it proposes to increase all wage rates by 2.5% and effective July 1, 2001, to increase the June 30 rates by .75%.

The Association focuses its offer on improving the wage rates rather than the benefits of the members of this unit. It proposes to maintain the clothing allowance at \$450 for the term of the successor Agreement. The wage only difference between the parties' offers totals \$22,936 for this bargaining unit of 19 law enforcement personnel.

STATUTORY CRITERIA

111.77(6) In reaching a decision, the arbitrator shall give weight to the following factors:

- a. The lawful authority of the 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 these costs.
- d. Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - 1. In public employment in comparable communities.
 - 2. In private employment in comparable communities.
- e. The average consumer price for goods and services, commonly known as the cost of living.
- f. The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

DISCUSSION

The following statutory criteria do not serve to distinguish between the final offers of the parties: a) the lawful authority of the Employer; b)

stipulations of the parties; g) changes in the foregoing. The Employer's clothing allowance proposal is consistent with its proposal to increase the clothing allowance for Fire Fighters in the second and third years of the Agreement. Otherwise, the clothing allowance proposal has little bearing on the determination of this interest dispute.

This particular unit of law enforcement personnel participated in an interest arbitration proceeding before Arbitrator Kerkman back in 1977 and again in 1987 before Arbitrator Petrie. Arbitrators Kerkman, Petrie Fleischli, Michelstetter, and Gundermann in cases between the Village and the Fire Fighter unit and Arbitrator Nielsen in a case involving the residual unit did not establish a firm group of comparables.

The Association argues that eight municipalities other than Greendale should serve as the comparability grouping for this dispute. The Association proposes the following group of comparables located in the southern portion of Milwaukee County: Greenfield, Hales Corners, and Franklin which are geographically contiguous to Greendale, as well as, Oak Creek, South Milwaukee, Cudahy, St. Francis and West Milwaukee. The Village argues that 28 suburban departments located in Milwaukee and Waukesha counties should serve as the group of comparable communities to determine the wage issue, in this case.

Association Exhibit 402 establishes that the population of West Milwaukee is just over 4,000. The average population of the eight communities proposed by the association is 18,800. The community of West Milwaukee's population is less than a quarter of the average. The population of the Village of Greendale is just shy of four times the size of West Milwaukee.

The Arbitrator concludes that West Milwaukee should not be included in the group of primary comparables. It is too small. It is included in the group of 28 communities which include large municipalities such as Waukesha, Brookfield, and Wauwatosa, as well as, smaller communities such as West Milwaukee. The comparability group of seven communities, excluding West Milwaukee, is a sufficient number to serve as a primary group of comparables.

The Village proposes the following list of 27 communities as a general grouping of large and smaller communities in Milwaukee and Waukesha counties to serve as a basis for comparing the wage rates of the Greendale Police Officers, Detectives, and Juvenile Officers and on which the Village argues the Arbitrator should rely in his determination of this dispute.

The Arbitrator identifies two dimensions to the wage issue, the wage level, and the rate of increase of the wage rate over the term of the successor Agreement. In determining wage levels, the Arbitrator references the primary group of comparables. The communities in the primary group of comparables are within a population range of 2-to-1 and located geographically in the southern quadrant of Milwaukee County. The wage level measures the actual pay levels of law enforcement personnel.

The group of 27 communities, provides an excellent indication of the trend of wage increases provided by communities both large and small in Waukesha and Milwaukee counties. They are: Shorewood, Greenfield, West Allis, South Milwaukee, New Berlin, Bayside, Glendale, Whitefish Bay, River Hills, Brown Deer, Brookfield, Oak Creek, Franklin, Germantown, Hales Corners, Elm Grove, Wauwatosa, Menomonee Falls, West Milwaukee, Cudahy, Waukesha, Fox Point, Mequon, Muskego, St. Francis, Thiensville and Butler.

The Employer argues that the group of 27 should serve as the sole basis for determining both the wage level and rate of increase aspects of the wage dispute. It points to the range of applications it receives to fill vacancies in the department. It notes that these applications come from all over the state including the surrounding communities, such as the City of Milwaukee. Village Exhibit 1D demonstrates that of the 41 persons who applied to fill a vacancy in the department in 1999, 13 came from the City of Milwaukee. Yet, the City of Milwaukee is not included by the Village among the 27 group of comparables, and rightfully so. However, under the logic of Exhibit 1D, the City of Milwaukee should be included in the comparability group. The Arbitrator concludes that, just because police officers in the City of Milwaukee apply for a vacant position in the Village of Greendale, it does not establish an adequate basis for employing the larger grouping of comparables as the sole group to provide context to this dispute. However, the group of 27 provides an excellent

group of secondary comparables to track the rate of increase of wages of law enforcement personnel in Milwaukee and Waukesha counties.

WAGES

(c) The Interest and Welfare of the Public

In Village Exhibit 1C, the Employer lists the 13 individuals who left the Greendale Police Department during the decade of the '90s, from January 1990 through August 1999. Seven of the 13 retired. Four individuals left the department to take jobs in other departments. Two left for that reason in calendar years 1991 and 1992. Two others left during the three year term of the expired agreement, one in 1997 and one in 1998. Disciplinary reasons are associated with the termination of the employment of two officers.

The Association argues that this turnover is based upon the salary and benefit levels of this Employer. The Village argues that employees left the department to take positions in much larger departments wherein they would have greater opportunities for advancement.

The Arbitrator concludes that turnover of 2 employees in a unit of 19, slightly over 10%, cannot be ignored. When a police officer joins a department, such as Greendale, the individual must realize there will be a limited number of opportunities for advancement. The Arbitrator finds that two remains a small number of individuals to leave a department, however, it is the beginning of some concern. If any more officers had left the employ of the police department during the term of the expired agreement and during the pendency of this arbitration proceeding, the Arbitrator would conclude that officers are voting with their feet. However, turnover of 2 of 19 does not substantiate a claim that officers are underpaid and seek higher pay in other departments. Accordingly, the Arbitrator concludes that this criterion provides some support to the Association offer which increases the end rate of all unit employees by 10%, rather than 8.85% under the Employer's offer, by the expiration of the term of the successor agreement in December 2001.

(d) Comparability

In the base year, calendar year 1998, the wage level of the police officer at the top step of the salary schedule in the Village of Greendale was \$28.72 below the average of \$3,701.71 in the seven primary comparable communities. In calendar year 1999, the average wage level of the police officer at the top step increased by 3.37% to \$3,826. Under the Village final offer, the wage rate of the police officer at the top step at \$3,781 would be \$45 below the average. Under the Association offer, the wage rate for the top police officer would be \$3,802 or \$24 below the average. The Village offer increases the disparity below the average from \$28.72 to \$45. The Association final offer decreases that disparity to \$21 below the average in calendar year 1999.

In calendar year 2000, only three of the primary comparables settled by the date of the hearing in this matter. That is an insufficient number of settlements on which the Arbitrator may draw any conclusions.

However, 14 of the 27 secondary comparables did settle for calendar year 2000. The Arbitrator used Village Exhibit 6 to calculate the percentage increase provided by the comparables in calendar year 1998 over calendar year 1997 to provide the percentage of increase in the base year, calendar year 1998. In the base year, all 27 communities had settled. Hales Corners negotiated a wage freeze in exchange for other benefits, unrelated to this dispute between the Village of Greendale and the Labor Association of Wisconsin. Nonetheless, the Arbitrator included the wage freeze in the calculation of the average increase for calendar year 1998 which amounted to 3.2% among the 27 comparables. The rates in the Village of Greendale increased in 1998 over 1997 by 3.5%.

In calendar year 1999, the secondary comparables (25, excluding Germantown and Wauwatosa for which only estimates were provided in Village Exhibit 6) averaged 3.379%. The rate of increase of the primary and secondary comparables for calendar year 1999 for all practical purposes is equal.

In calendar year 2000, 14 of the 27 secondary comparables settled on an average increase of 3.21%. The Association's final offer of 3.5% in calendar year 1999 is .13% above the average. The Employer's final offer is .42% below

the average. The Association's final offer of 3.25% is only 4/100 of a percent above the average settlement of the secondary comparables in calendar year 2000. For the first two years of the successor agreement, the comparability criterion strongly supports the adoption of the Association's final offer.

(e) Cost-of-Living

The Arbitrator measures the total package cost figures of each final offer against the change in the Consumer Price Index. In the first year of this proposal, calendar year 1999, there should be some roll down effect due to the decreased contribution to WRS. However, the costing figures do not permit the Arbitrator to precisely apply this criterion. The Arbitrator concludes that this criterion does not serve to distinguish between the final offers of the parties.

(f) Overall Compensation

The Association reviews in some detail the benefit packages provided by the primary comparables to their law enforcement personnel. Most notably, the Village of Greendale only provides tuition reimbursement, a significant benefit, to officers hired prior to 1990. In a department that has experienced turnover of 13 officers since 1990, those officers hired in the decade of the 1990s, do not enjoy that benefit. Six of the seven comparables do enjoy this benefit. The six comparables that do provide this benefit offer it to all of their employees.

The Employer argues that the officers in Greendale work fewer hours per year than officers in comparable communities. It bases its argument on the secondary comparables. The Arbitrator, for reasons discussed above, finds that the reference to the secondary comparables to establish the wage level or rates, whether in hourly or monthly terms, is inappropriate. The hours worked by the primary comparables, as noted in Association Exhibit 700, establishes that Greendale officers work the second highest number of hours per year at 2,041. Only officers in St. Francis, who work 2,085 hours per year, work more hours than Greendale officers.

The only benefit that the Greendale officer enjoys at a level higher than the primary comparables is that sick leave payout. The comparables provide a payout of no more than 72 days in cash. In Greendale, the payout may equal 76.25 days if an employee is able to take advantage of the 610 hours, the maximum payout. The Arbitrator concludes that this criterion favors the adoption of the Association final offer due to the unavailability of tuition reimbursement to all Greendale officers.

(h) Such Other Factors - Internal Comparability

The employees of the Village are organized into four units. The law enforcement personnel with powers of arrest are represented by the Labor Association of Wisconsin, as are the Clerk-Dispatchers. Local 1777, of the International Association of Fire Fighters, represents the Fire Fighters of the Village and Milwaukee District Council 48, AFSCME, represents the remaining street and clerical employees of the Village. The Employer settled three-year agreements for calendar years 1999, 2000, and 2001 with the Fire Fighters, the Clerk-dispatchers, and the AFSCME unit. The Village reached agreement with the Fire Fighters and provided them with wage rate increases of 2.5% in each of the three years. In calendar year 1999, the Village agreed to allowances of \$200 for the HAZ-MAT team and for the Confined Space team, which the Employer costed at 4/10 of 1%. In the second year, the Village agreed to an additional one-half holiday on Easter Sunday, which it costed at .41%. In the year 2000, the Village increased the uniform allowance for Fire Fighters by \$20 and by \$10 in the third year of the agreement, just as the Village proposed to do in the police unit under the Employer's final offer.

The Employer reached agreements with the Clerk-Dispatchers and the AFSCME unit in which the wage rates increase in each of the three years of the agreement by 2.95%. The Village argues that it has established a pattern of wage increases for the three years of the agreement. The police are a holdout unit. The Employer argues that the Arbitrator should not reward the holdout unit with a higher wage increase than that provided to the other unionized employees of the Village.

The Association argues equally as strenuously as the Village that there is no pattern of settlement. The Employer provided additional benefits to each of the units which it does not provide to the Association and which provide the basis for settlement with these other units. The Association points to the improvement in the maximum sick leave accumulation which the Employer offers to the Fire Fighters in each year of the three-year agreement. In the first year, calendar year 1999, the maximum sick leave accumulation increases from 2160 hours to 2232 hours; in calendar year 2000, it increases to 2304 hours from the 2232 hour level; and in the final year of the agreement the maximum sick leave accumulation increases to 2400 hours under the Fire Fighter Agreement.

The Association points to the increase in the number of hours of holiday time from 56 to 64 that Clerk-Dispatchers may take as time off rather than in pay. In the third year of the agreement, the Clerk- Dispatchers' agreement provides for the reduction in the age, from 62 to 58, at which employees may retire and receive Employer contribution towards health insurance.

The Association notes that in the AFSCME unit, in exchange for freezing the starting rate for the Water Plant Assistant Operator and the Mechanic, the retirement age for Employer contribution to health insurance was lowered in the first year of the agreement, calendar year 1999, from age 60 to 58. The Association maintains that the benefits achieved by the other three units increases the cost of those settlements to a level equal to or greater than the Association's offer.

The parties raise the question of how settlements that differ from unit to unit of one employer may be viewed by an arbitrator as a pattern of settlement. This Arbitrator addressed that issue in Douglas County (Highway Department), Dec. No. 28215-A (3/95) in which he observed, as follows:

The Arbitrator agrees with the County's position that the paramedic supplement is in accord with the Employer's intended settlement pattern. The holiday pay adjustment is unique to the operation of the Paramedic unit. In across-the-board settlements, the parties must have flexibility to make adjustments to

rates for a particular classification or position or to bring certain benefits in line with the benefits enjoyed by other bargaining units without destroying the character of the overall settlement. There are limits to the non-costing of such adjustments. Where the adjustments are made to a large portion of the unit, it should be costed as part of the across-the-board settlement. There are unique circumstances which arise in each collective bargaining unit. An analytical framework which does not take those unique circumstances into account will rigidify the collective bargaining process.

The increase in the maximum number of sick days that may be accumulated and used as a basis for payout at retirement for the one employee anywhere near the maximum accumulation of sick leave hours is a benefit difficult to cost. There is a cost to this benefit. It is delayed. Because it is paid out at the wage level at the time of retirement, the difference in wage rate at the time of accrual and at the time of payout may indeed be substantial. However, the Arbitrator concludes that this kind of benefit is the kind referenced in Douglas County which may vary from unit to unit.

Similarly, the reduction in the age at which an employee may retire with employer contribution towards health insurance, again, is a benefit difficult to cost. It may improve the total package settlement in a particular unit. It does not alter a pattern of settlement on wages achieved by the employer in the course of its negotiations with its bargaining units. Accordingly, the Arbitrator concludes that this Employer has achieved a pattern of settlement on wages at 2.95%. Its offer to the law enforcement unit is consistent with that pattern, i.e., 2.95% in each of the three years of the successor agreement. The Arbitrator concludes that the such other factors - internal comparability criterion provides substantial support for the inclusion of the Employer's final offer in the successor Agreement.

SELECTION OF THE FINAL OFFER

In the above discussion, the Arbitrator determined that the criterion, the interest and welfare of the public, provides some support to the selection of the Association's offer. The turnover, two employees leaving the employ of the

Village, may suggest dissatisfaction of Greendale police officers with their wages, hours and working conditions to the extent that some are willing to leave the employ of the Village to improve their lot. The Arbitrator does not conclude that there is convincing evidence of such dissatisfaction.

The comparability criterion provides strong support for the selection of the Association's final offer into the successor Agreement. The such other factors - internal comparability criterion provides strong support for the adoption of the Employer offer and its inclusion in the successor Agreement.

The Employer argues that the law enforcement unit is a holdout to the pattern of settlement established for calendar years 1999-2001 for employees of the Village. The Arbitrator disagrees. Rather, the Association proposes a wage settlement for the duration of the successor Agreement that is consistent with the percentage raises afforded by police departments in the Milwaukee-Waukesha County area. The wage level that the increases proposed by the Association would generate in the first year, calendar year 1999, are consistent with those of the primary comparables in calendar year 1999 (the one year in which a sufficient number of primary comparable settlements exist from which the Arbitrator may draw any inferences.) The Association's offer is consistent with the pattern of increases provided by a large group of secondary comparables during the first two years of the proposed three-year successor Agreement.

The Employer proposes a wage increase consistent with the pattern of increases it provides its other bargaining units. Contrary to the strenuous argument of the Association, the Arbitrator concludes that the Employer has demonstrated that it has achieved a pattern of settlement among the three other units of employees of the Village. The Employer's final offer is slightly below the percentage increase paid by the primary comparables to their law enforcement officers in calendar year 1999, and the Employer's offer is 27/100 of 1% below the percentage increase provided by the secondary comparables to its law enforcement officers in calendar year 2000. The repetition of slightly below average increases in each of three years increases the disparity from the average of the wage level of law enforcement personnel in the Village from slightly below average, \$27.72 in the base year 1998, to what

in all probability will be approximately \$67+(approximately, 1.6%) below the average at the end of this Agreement in December 2001.

In City of Green Bay (Water Utility), Dec. No. 28070-A (11/94), this Arbitrator observed that:

Patterns of settlement are difficult to achieve. Where they are achieved, this Arbitrator finds such patterns persuasive, if not determinative of the dispute. Arbitrators may refrain from following a settlement pattern pegged to a certain percentage increase, where it is demonstrated by compelling evidence that the wage rates of a particular classification(s) of employees are substantially above or below the rates paid by comparable employers to employees in similar classifications. The wage levels of a particular group or classification of employees may be analyzed to determine the relationship between the market wage rate for the particular classification of employees and the wage rates which are the subject of the arbitration proceeding. The question then for the Arbitrator to determine: are the wage rates for the classifications of employees, which are the subject of the interest arbitration proceeding, substantially less, less, equal to, greater or substantially greater than the rates paid to employees in identical or similar classifications employed by comparable employers?

The determination of what is a substantial disparity between the average and the wage levels generated by the proposals of the parties in an interest arbitration proceeding is not fixed at a particular or specific level. In Richland County (Highway Department), Dec. No. 27897-A (9/94), this Arbitrator concluded that wage levels that were 2.4% above the average in the base year were not substantially above the average so as to justify a lower wage increase. Here, the Employer's offer is not that far off from the average annual increase provided by either the primary or secondary comparables. Coming out of this Agreement, as noted above, that deviation will increase and depending on what the comparables do in calendar year 2001 may pose a problem to the parties in their next bargain. However, at issue before this Arbitrator is the Agreement for calendar years 1999-2001.

The evidence of police officer dissatisfaction with the wages and working conditions in the Village is not substantial. The turnover of two employees leaving the Village for other departments during the term of the expired agreement is insufficient for the Arbitrator to conclude that employees are voting with their feet. If the Arbitrator had substantial evidence, three or more employees out of a unit of nineteen leaving the employ of the Village during a three-year period of an agreement, the Arbitrator would conclude that evidence would be sufficient to outweigh the pattern settlement achieved by the Employer and adopt the Association's final offer.

The pattern of settlement achieved by the Village with its other units provides sufficient support to the adoption of the Employer's position so that the Arbitrator concludes by the slimmest margin that it should be included in the successor Agreement. Accordingly, in the Award which follows, the Arbitrator selects the Employer's final offer for inclusion in the successor Agreement.

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

AWARD

Under the statutory criteria at Sec. 111.77(6), Wis. Stats., and for the reasons discussed above, the Arbitrator selects the final offer of the Village of Greendale, which together with the stipulations of the parties, are to be included in the Collective Bargaining Agreement between the Village of Greendale and the Labor Association of Wisconsin, Inc., for and on behalf of the Greendale Professional Police Association for calendar years 1999, 2000 and 2001.

Dated at Madison, Wisconsin, this 15th day of February, 2000.

Sherwood Malamud

Arbitrator