

STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

In the Matter of the Petition of  
TEAMSTERS UNION, LOCAL NO. 695

Case 9 No. 48333 MIA-1759  
Decision No. 27679-A

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

Sherwood Malamud  
Arbitrator

VILLAGE OF WAUNAKEE (POLICE  
DEPARTMENT)

**Appearances:**

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

Bruce K. Patterson, Employee Relations Consultant, P.O. Box 0048,  
New Berlin, Wisconsin 53151-0048, appearing on behalf of the  
Municipal Employer.

**ARBITRATION AWARD**

**Jurisdiction of Arbitrator**

On July 6, 1993, the Wisconsin Employment Relations Commission, appointed Sherwood Malamud to serve as the Arbitrator under Sec. 111.77(4)(b) of the Municipal Employment Relations Act to determine said dispute between Teamsters Union Local No. 695, hereinafter the Union, and the Village of Waunakee (Police Department), hereinafter the Village or the Employer. Hearing in the matter was held on August 3, 1993, at the Village Hall in Waunakee, Wisconsin. Post-hearing briefs were exchanged through the Arbitrator, and the record was closed with the exchange of original briefs on September 20, 1993. This dispute is resolved 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 MATTER IN DISPUTE**

Both the Union and the Village propose a two year agreement covering the 1992 and 1993 calendar years. The Union proposes a 7% across-the-board wage increase for each of the two years.

The Village proposes a 5% across-the-board wage increase in each of the two years.

## **BACKGROUND**

The police bargaining unit of the Village of Waunakee has seven police officers. Douglas Gehrke is the most senior. He was hired on May 17, 1982. The officers next in seniority have hire dates of January 1, 1987, and April 29, 1988. The remaining four officers were hired in the 90s between May 7, 1991, and June 1, 1993.

The Village of Waunakee is a fast growing community located approximately six miles north of Madison, Wisconsin. Between 1980 and 1986, the Village experienced growth of 35%, when the rest of Dane County experienced 7% growth over the same period. That rate of growth continues in the 90s. From 1990 to 1992 Waunakee grew approximately 7.8% in that two year period.

The parties negotiated a one year agreement in 1991. In that agreement, the parties agreed to a significant reduction in the work week/work year. They agreed to a 6-3 work schedule. Vacations were adjusted to reflect the six day work cycle, and officers working on holidays were to receive overtime pay under the 1991 Agreement. In exchange for this reduction in work hours, the Union agreed to a wage freeze. However, longevity was increased to a percentage of the wage base. Longevity commences after five years of service with the Village when an employee reaches the top of the salary schedule. It is in this factual context that the parties support their respective wage proposals. The positions of the parties and their arguments are considered under the following statutory criteria.

## **STATUTORY CRITERIA**

### 111.77 EMPLOYMENT RELATIONS

...

- (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 employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally:
  - 1. In public employment in comparable communities.
  - 2. In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (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.

## **POSITIONS OF THE PARTIES**

### **The Union Argument**

The Union emphasizes that this case should turn on criterion "(h) Such Other Factors . . ." The Union argues that its final offer is predicated upon its decision to drop its demand that the residency requirement be deleted from the Agreement. The Union argues that in 1992, the average price of a home sold in Waunakee for \$121,192. For the first seven months

of 1993, the average sale price of a home in Waunakee increased to \$133,352. Of the comparable communities which the Union argues are applicable to the determination of this dispute, homes in Waunakee were the third most expensive in the area behind only the average price of homes sold in Fitchburg and Middleton. The experience of Officer Giese highlights this point. He was hired in 1991. He sold a 4-bedroom home in Mauston for \$89,900, only to find that he had to pay \$122,100 for a smaller 3-bedroom home in Waunakee.

The Union points to the testimony of Vernon Acker, a local realtor in the Village. He testified to the use of a rule of thumb that a person should not purchase a home which is any more than 2-1/2 to 3 times his/her gross income. Under that rule of thumb, a Waunakee police officer would not be able to purchase a home which cost more than \$74 thousand plus. Acker confirmed that lot prices and home prices in the immediate vicinity of Waunakee but outside the Village limits were far less expensive. The thrust of the Union's position appears at pp. 5-6 of its brief, as follows:

Notwithstanding the high cost of residential real estate within the Village of Waunakee, the Employer rejected the Union's proposal for rescission of the residency requirement, thereby forcing officers to compete for homes which were beyond their current means. Given the Village's steadfast position, the Union withdrew its proposed deletion of the residency requirement. Instead, the Union proposed a wage increase of 7% for 1992 and for 1993. The higher increases which the Union seeks will at least in part offset the higher housing expenses that Waunakee officers will continue to incur as a result of the continuing residency requirement.

The Union proposes ten communities located in Dane County as comparables to the Village: De Forest, Fitchburg, Town of Madison, McFarland, Middleton, Monona, Oregon, Stoughton, Sun Prairie, and Verona. The Union's comparables differ from the list proposed by the Village in its inclusion of the City of Fitchburg with a population of 16,254, the Village of McFarland with a population of 5,506, the City of Monona with a population of 8,579, and the City of Stoughton with a population of 9,323. The Union argues that proximity and location within Dane County are important factors which dictate the selection of its list of comparables. The communities it suggests compete for employees in the same labor market, and the communities are affected by similar economic conditions. In this regard, the Union cites the following awards in support of its proposed list of comparables: Monona Grove School District, 25034-A (Petrie, 1988); City of Sturgeon Bay (Utilities), 25549-B (Vernon, 1989); City of Edgerton

(Police Department), 27179-A (Miller, 1992); and Hartford Union High School District, 18845 (Zeidler, 1982).

The Union argues that the 7% wage increase it proposes serves to offset the high price of real estate in the Village. Police officers must contend with high home prices in the face of the Employer's residency requirement. In addition, the Union emphasizes that the residency requirement of the Village is the most restrictive of any comparable. Other municipalities that do have a residency requirement permit officers to reside within some distance of the municipality but outside the municipality.

The Union emphasizes that the salary rates generated by the increases which it proposes will leave Waunakee in the bottom third of the comparables.

The Union deflects the Employer's argument that other comparable communities have not offered percentage increases above that proposed by the Village. The Union notes that the Village failed to delineate the dollar increases generated by the settlements among the comparable communities for calendar years 1992 and 1993.

The Union asserts that the internal comparables favor the Union's offer. It notes that the average increase received by librarians is 6.3% in each year of 1992 and 1993. Some of the librarians received 12.5% wage increases.

The Union argues that reference to total compensation and benefits paid by the Village to its employees does not serve to distinguish between the offers of the parties.

The Union emphasizes that the cost of living criterion supports the Union's proposal. If the cost of living increases over the last five years is examined, it is apparent that the Union suffered an 8.6% net loss in earning capacity in the contract years preceding 1991. The Union attempts to regain, in an incremental fashion, that purchasing power lost in 1989 through 1991. The Union cites with approval the observation made by Arbitrator Vernon in Rock County Department of Public Works, 24319-A (1987) that:

Relative to the cost of living criteria this factor must take a back seat to the external comparability factor where an offer is found to reasonably address a wage inequity.

The Union concludes that the statutory criteria support the selection of its final offer for inclusion in the successor 1992 and 1993 Agreement.

## The Employer Argument

The Village argues that two of the above criteria serve as the basis for distinguishing between the proposals of the parties. Comparability and Cost of Living support the selection of the Village's final offer over that of the Union.

With regard to the Comparability criterion, the Village suggests that the City of Columbus and Lake Mills serve as comparables to Waunakee. Columbus has a population of 4,159 and Lake Mills a population of 4,256. The Employer asserts that the municipalities of Lake Mills and Columbus are similar in population. The Village list of comparables agrees with the Union's inclusion of the municipalities of the De Forest, Middleton, Sun Prairie, Verona, and Oregon. The Village excludes the communities of Fitchburg, McFarland, Monona, and Stoughton. Although Middleton is not included as a comparable in its brief, it is listed as comparable in Exhibit 4-1. In its brief, the Village argues that the communities of De Forest, McFarland, Monona, Oregon, Stoughton, and Verona fall within a population range of 3600 of Waunakee.

The Village argues that Employer Exhibit 4-7, which details the generous benefit package provided to police officers, as well as, Union Exhibit 10, which reflects the wages paid to police officers in comparable communities for 1992 and 1993 demonstrate the reasonableness of the 5% annual wage increase proposed by the Village for 1992 and 1993.

The Village emphasizes that the 7% wage proposal of the Union can be traced to the wage freeze agreed to by the parties in exchange for a 6.9% reduction in the scheduled work days per year in the 1991 contract.

The Village argues that the Arbitrator should give little consideration to the library settlement with AFSCME. It was a first contract for these employees. Secondly, arbitrators normally reject the comparison between general government employees, such as, librarians, and police officers or firefighting personnel who are subject to a different arbitration statute than general government employees.

With regard to the reference to residency by the Union, the Village argues that the Arbitrator should ignore Union Exhibits 12-14 as irrelevant to this case. The Union withdrew its proposal on residency. When employees accepted employment with the Village as police officers, they were well aware of the requirement that they reside in the Village. The Employer views the Union's demand in the following light:

For them to argue the necessity of an excessive 14% wage increase because of housing costs is simply an

attempt to change the rules after they've come to play the "game".

The Village argues that the Union's demand is greater than the wage increase provided by comparable communities to its police officers.

The Village argues that the cost of living criterion supports the selection of its final offer. The Village offer exceeds the increase in the CPI over a two year period by approximately 4%. The Village asks that the Arbitrator select its final offer as the one to be included in the 1992-1993 successor Agreement.

## DISCUSSION

### Introduction

In their arguments, each party emphasizes matters not at issue in this dispute. The Union states that its final offer is formulated on the basis of its decision to withdraw its proposal to delete the residency requirement from the expired 1991 Agreement. The Village emphasizes that the Union's offer is related to the 1991 wage freeze agreed to by the parties. The Village implies that any wage ranking of its police officers will place them below the average, in part, because of the wage freeze.

The Arbitrator gives little weight to the Union's residency arguments. The arguments presented, concerning the cost of real estate and housing in the Village of Waunakee in light of the restrictive contractual residency requirement, support an argument to either change the residency requirement to an area outside the bounds of the Village or the elimination of the requirement in its entirety. Residency is not an issue in this dispute. Accordingly, the Village did not present any arguments on this subject.

The premise of the Union's argument that a larger wage increase will serve to offset the increasing price of housing in the Village must fail on its own terms. The data presented by the Union demonstrates that the increase in the cost of housing is outstripping the wage demand which the Union proposes, here. Housing costs increased in the first seven months of 1993 by approximately 10%, when the Union's proposal calls for a 7% increase. In addition, the data submitted demonstrates that wage increases will not be sufficient to generate sufficient income to permit police officers to compete for and pay the average price for a home in Waunakee. Again, the Union's argument addresses the residency requirement. However, it does not demonstrate that wage increases in excess of those provided by comparable jurisdictions will permit officers to afford housing in the Village.

The argument of the Village that the Union's demand represents an attempt to make up for the wage freeze agreed to by the parties in 1991, and the Union's argument that the settlements achieved in 1989 and 1990 did not keep pace with the increase in the cost of living are given little weight by the Arbitrator. The two settlements for the three years of 1989 through 1991 were voluntarily achieved. The wage levels reflected in Chart A, which is appended to this Award, reflect that the wage rate paid to Waunakee police officers is not the lowest of the comparables, despite the 1991 agreement to freeze the wage rates in order to put in place a 6-3 work schedule.

The discussion below addresses the issue in dispute, the wage rate increase for calendar years 1992 and 1993, rather than the strengths and weaknesses of past voluntary agreements.

### Comparability

In the course of their negotiations, the parties have not agreed upon a list of comparables. This issue has not been addressed in any manner in the past. The Arbitrator accepts those communities which the parties have themselves identified as comparable to the Village of Waunakee. The parties in the exhibits submitted at the hearing identify the Cities of Middleton and Sun Prairie as comparables to Waunakee. Both communities are much larger than Waunakee, in population, in size of department, and in the size of the tax base available to fund and pay wage increases to police officers. Nonetheless, the parties have identified these larger communities as comparables. Both Middleton and Sun Prairie are experiencing rapid rates of growth as is the Village of Waunakee.

The Village does not agree to the Union's suggestion of the City of Fitchburg as a comparable. It too is a large municipality with the largest population of those referenced by the parties. The population of Fitchburg is 16,254. The population of Sun Prairie is 15,333 and Middleton 14,160 according to Union Exhibit 7. The inclusion of the City of Fitchburg would make the list of comparables overly top heavy with larger municipalities dominating the comparability list. Accordingly, the Arbitrator does not include the City of Fitchburg on the list of comparables.

The Village of McFarland is slightly smaller than Waunakee. The Arbitrator has included that community on the list of comparables. In addition, the Cities of Stoughton and Monona are included in the list of comparables. Both are larger than Waunakee; their inclusion provides a list of comparables with four communities with population sizes which closely approximate that of Waunakee. Stoughton has a larger population but a tax base of \$260 million which approximates that of Waunakee at \$183 million. The City of Monona population is closer to that of Waunakee, but its



equalized value of property closely approximates that of Middleton rather than Waunakee.

The Arbitrator finds that the Town of Madison is not an appropriate comparable. It is a disjointed community. The policing problems and unique characteristics of the town serve to exclude it as a comparable to Waunakee.

Lake Mills and Columbus are located outside of Dane County. The Arbitrator excludes these two communities from the list of comparables. They draw upon a labor market which differs significantly from that of Waunakee which is located in Dane County. The tax base of the City of Columbus and Lake Mills are much smaller than that of Waunakee. The two do not serve as comparables to the Village of Waunakee.

On the basis of the data available in this case and for the limited purpose of determining this arbitration award, the Arbitrator selects the following communities as comparables to the Village of Waunakee for purposes of comparing wage rates of law enforcement personnel: De Forest, McFarland, Middleton, Monona, Oregon, Stoughton, Sun Prairie, and Verona.

#### Comparability - Wage Rates

The Union proposed McFarland, Monona,<sup>1</sup> and Stoughton as comparables, and the Arbitrator has accepted those communities and included them in the list of comparables. The Union failed to provide the Arbitrator with data or exhibits from which data may be obtained concerning the salary levels of police officers in these three communities for calendar year 1991. Accordingly, the Arbitrator could not establish the wage levels in a base year, 1991, and thereby establish the level of increase in wages afforded by these communities stated as a dollar amount in 1992. Since the Village did not identify these communities as comparables, they did not provide percentage wage increases for these communities in its Exhibit 4-5. Due to the lack of data, the Arbitrator provides limited weight to Chart A.

The data reflected in the Chart suggests not only that the wage rates paid to police officers in the Village of Waunakee are below average both at the start rate and at the maximum, but that the difference between the average and the rates paid by the Village under its offer is moving further below average even with a 5% wage increase in 1993. The data for 1993 is incomplete; three communities are not settled. Nonetheless, Chart A

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<sup>1</sup>Monona is a marginal comparable to the Village of Waunakee. Although the population of the two are within 3600, the equalized value of real estate in the City of Monona at \$404 million is much greater than that of Waunakee at \$183 million.

suggests that a **lift** in wage rates to 6% in the second year, 1993, is sustainable on the basis of the data available for 1993.

The Union proposal for 7% wage increases in each of two years, 1992 and 1993, is without support among the comparables. There is no indication that any municipality provided their police officers with a 7% wage increase in either year. Although the wage rates paid to police officers in Waunakee are below average, the Union does not argue nor does the data support a finding that "catch-up" is an element which must be applied to the determination of the appropriate salary increase, in this case. On the other hand, the data suggests that the 5% increase and the dollars generated by that increase as proposed by the Village more closely approximates the wage increases provided by comparable communities. Under the Village's offer a monthly increase of \$109.00 is generated at the top step. This compares favorably with the monthly increase of \$113.00 in Middleton, \$115.00 in McFarland, \$111.00 in De Forest, \$104.00 in Stoughton, etc.

The above analysis supports the inclusion of the Village final offer in the successor Agreement for 1992 and 1993.

#### Cost of Living

The Village offer exceeds the level of increase in the Consumer Price Index for 1991 and for 1992 which serve as a basis for the wage increases in 1992 and 1993. In addition, the wage increases proposed by the Village more closely approximate those provided by comparable communities. Accordingly, the Arbitrator concludes that this criterion supports the selection of the Village offer for inclusion in the successor Agreement.

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

The Arbitrator has reviewed the total compensation criterion and finds that the range of benefits afforded police officers in the Village as contrasted to the level of benefits provided by comparable communities does not serve to distinguish between the final offers of the Village and the Union, in this case.

Internal comparability supports neither final offer. The Agreement between the Village and AFSCME for Librarians is the first contract between the parties. It contains the kind of adjustments necessary to put a wage schedule into effect. None of the other criteria serve to distinguish between the final offers of the parties.

In the above Discussion, the Arbitrator determines that both the comparability criterion and the cost of living criterion support the inclusion

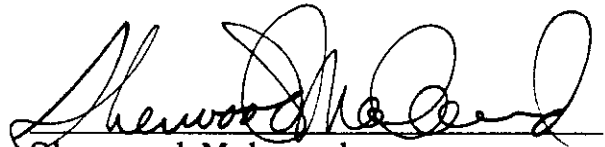
of the Village's final offer in the successor Agreement. Accordingly, the Arbitrator selects the final offer of the Village of Waunakee for calendar years 1992 and 1993 for inclusion in the parties' successor Agreement.

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

**AWARD**

Upon the application of the statutory criteria found at Sec. 111.77(4)(b), Wis. Stats., and upon consideration of the evidence and arguments presented by the parties and for the reasons discussed above, the Arbitrator selects the final offer of the Village of Waunakee which together with the stipulations of the parties, are to be included in the collective bargaining agreement between the Village of Waunakee and Teamsters Union, Local No. 695, effective January 1, 1992, through December 31, 1993.

Dated at Madison, Wisconsin, this 15th day of November, 1993.

A handwritten signature in cursive script, appearing to read "Sherwood Malamud", written over a horizontal line.

Sherwood Malamud  
Arbitrator

## CHART A

	1991		1992		1993	
	Start	Max	Start	Max	Start	Max
De Forest	1955	2080	2060	2185	2171	2296
McFarland			1775	2059	1883	2184
Middleton	2025	2354	2147	2497	2244	2610
Monona			2131	2457	2238	2580
Oregon	1674	1759	1758	2057	not	settled
Stoughton			2314	2414	2418	2518
Sun Prairie	2025	2356	2128	2475	not	settled
Verona	1784	2198	1896	2336	not	settled
Avg.			2026	2310	2191	2437
Waunakee, Village	1768	2065	1856	2164	1949	2277
Union	1768	2065	1892	2210	2024	2364

	1992		1993	
	Start	Top	Start	Top
Difference Between Avg. and <b>Village</b>	-170	-146	-242	-160
and <b>Union</b> Proposals	-134	-100	-167	-73

### Notes to construction of Chart A:

Many communities provided split increases in 1, 2, or all 3 calendar years 1991, 1992 and 1993. The monthly rates reflected in the chart are based upon the year end rate. The cost of these increases were not litigated by the the Village and the Union, in this case. The wage level and the amount of any increase are the two issues in dispute, here.

The figures in Chart A are based upon the data contained in Employer Exhibit 4-9 and Union Exhibit 10. With regard to Union Exhibit 10, the annualized figures were divided by 12 to produce the monthly wage rates.