

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of Arbitration
Between

OPINION AND AWARD

LABOR ASSOCIATION OF WISCONSIN, INC.

Case No. 28

No. 48268 MIA-1753

Decision No. 27803 -A

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

VILLAGE OF GERMANTOWN
(POLICE DEPARTMENT)

GIL VERNON, ARBITRATOR

APPEARANCES:

On Behalf of the Employer: James R. Korom, Attorney - von Briesen
& Purtell, S.C.

On Behalf of the Union: Patrick J. Coraggio, Labor Consultant - Labor
Association of Wisconsin, Inc.

I. BACKGROUND

On November 4, 1992, the Union filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission to initiate final and binding arbitration pursuant to Sec. 111.77(3) of the Municipal Employment Relations Act, with regard to an impasse existing between the Parties with respect to wages, hours, and conditions of employment of law enforcement personnel for the years 1993, 1994, and 1995. An investigation was conducted on October 21, 1992, and January 21, 1993, by a member of the Commission's staff, and the investigator advised the Commission on September 8, 1993, that the Parties were at impasse on the existing issues as outlined in their final offers.

On September 14, 1993, the Commission ordered the Parties to select an arbitrator from a list they provided. The undersigned was selected. A hearing was scheduled and held on December 21, 1993. The proceedings were transcribed, and post-hearing briefs were exchanged March 14, 1993.

II. FINAL OFFERS AND ISSUES

There are two issues before the Arbitrator. The first issue is the amount of wage increase for 1993, 1994, and 1995. The Employer offers to increase wage rates by 3.5% effective January 1, 1993, 3% for 1994, and 3% for 1995. The Union requests 3.5% effective January 1, 1993, 3.5% for 1994, and 4% for 1995. They also ask for an additional 1% increase in wages effective upon the implementation of agreed-upon changes in health insurance.

The second issue relates to the cap in the health insurance program for psychiatric benefits. The Union's final offer calls for a \$50,000 lifetime cap on psychiatric benefits. The Employer proposes a \$25,000 lifetime cap.

III. ARGUMENTS OF THE PARTIES (SUMMARY)

A. The Union

The Union analyzes its case in the context of the statutory criteria. At the outset they dismiss "the lawful authority" criteria as irrelevant since it was never discussed during the course of negotiations or at the arbitration hearing. In any event, they note that the Village of Germantown has the lawful authority to meet the terms and conditions set forth in the Association's final offer. They also believe that the Village of Germantown has the financial ability to meet the Association's final offer.

The next criteria is "stipulations of the Parties." This is a significant factor since in bargaining the Association agreed to change from a very comprehensive health insurance plan, commonly referred to as a base plus with a major medical, to a major-medical-type plan with a PPO option. This was a substantial change, in their opinion. Under the old plan employee's have 100% coverage for outpatient hospitalization, emergency care, physician in-patient services, maternity care, ambulance, skilled-nursing facility, and annual physical. In addition to these basic benefits, there is a major medical benefits umbrella which have employee deductibles of \$125 single, three per family. Thereafter the employee pays 20% of the next \$2,000. After these co-payments

are satisfied, benefits are covered 100% during the calendar year. Under the new plan employees are responsible for 10% of the first \$2,000 worth of covered medical expenses and thereafter receives 100% paid during the calendar year provided that the maximums are not reached. However, many of the new benefit levels now have maximums. If the employee chooses to use a Non-PPO provider, then the employee is responsible for 20% of the first \$2,000 of covered medical expenses whereas the old plan has none. These changes are an important factor in this case since the Employer has offered no quid pro quo for the concessions. The Union believes 1% is justified as a quid pro quo. The Union presents much argument concerning the need for a quid pro quo for the insurance change. Even the Employer's witness on health insurance, Mr. Brodzeller, testified that the Village would save a substantial amount of money by exposing the employees to more risk with the new plan. They go through many scenarios where cost would increase to employees. Additionally, they argue by example that a \$25,000 lifetime cap is insufficient.

The Association also believes that their offer is more consistent with "the interest and welfare of the public" criteria. Their point here principally is that their offer will result in good morale and thus is in the best interest of the public. Their offer is necessary to maintain morale since, when looking at the municipalities that they believe to be comparable, both offers will result in an increase in the already existing wage disparity. At the end of the contract the disparity will have increased to \$161 per month under the Employer's offer and \$146 under the Union offer.

The Union makes a variety of points concerning Criteria "D", "comparable employees". First, they contend their selection of comparable communities is more appropriate than the Village's. They rely on the municipalities of Bayside, Brown Deer, Fox Point, Grafton, Menomonee Falls, River Hills, Shorewood, and Whitefish Bay, along with the Cities of Brookfield, Cedarburg, Glendale, Mequon, and New Berlin. In selecting these, they relied on the following factors: (1) The interaction between Germantown Police Officers and their neighboring communities, (2) geographic proximity, (3) population, (4) square miles, (5) number of employees in the bargaining unit, and (6) ratio of citizens per police officer. In contrast, the Employer has taken a shotgun approach, utilizing only those comparables that appear to justify the Employer's argument. A good example of this in their estimation is Hales Corners, which is only three square miles compared to 36 for Germantown. The Employer also ignores almost all of the contiguous communities.

Second, regarding Criteria "D," the Union believes its offer is more consistent with the comparables. For example, in 1993 only one of the 13 communities received an increase less than that offered by the Village. Of the remaining 12 communities, only one, Cedarburg, received an increase equal to the final offer of the Village. The remaining 11 communities received year-end increases of 4% or greater. Even looking at the Employer's comparables, increases were almost uniformly 4%. The Union doesn't believe the Employer can justify a lower-than-normal increase in the face of a reduced health increase package.

The Union also addresses the internal comparables as part of their Criteria "D" analysis. It is their position that the Village has granted wage increases for 1993 through 1995 in excess of their final offer given in the present interest arbitration to both the Telecommunicators and the Department of Public Works. In 1993 the Village granted the Telecommunicators a wage increase of 3% on January 1, 1993, with an additional increase of 2% on July 1, 1993. This amounted to a year-end increase of 5.1%. On January 1, 1994, the Telecommunicators received a 3% across-the-board increase along with the addition of a forth-year wage step. The additional pay step, which, in effect, amounts to a 7% wage increase, will affect five out of the seven Telecommunicators before the current collective bargaining agreement expires. There was also improvements in the vacation schedule. Regarding DPW, they received an across-the-board wage increase of 4% in 1993. In 1994 they were granted a 3.5% increase, and in 1995 a 3% increase. The Union states this rolls up to be an increase in wages of 11% over three years. Last, in terms of Criteria "D," they reject comparison to private sector employers.

The statute also directs the Arbitrator to consider "overall compensation. The evidence in this regard shows, in the opinion of the Association, that the Village does not make up for its woefully low wages with an above-average benefit package. They present a detailed comparison of the components of total compensation, including work hours, longevity (which Germantown doesn't have), uniform allowance, retirement, holidays, sick leave, and vacation. They conclude that the benefit package for Police Officers in the Village of Germantown is average at best.

B. The Employer

As part of its analysis 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," the Employer submits it is unlike other north shore suburbs, particularly Mequon. While it is lucky to see increasing property value, its residents have modest incomes and thus less of an ability to pay. Moreover, the tax burden has been increasing for the period 1986 to 1991 more than any Milwaukee suburb. In short, taxpayers in Germantown are not as able to pay wage increases to the same degree as taxpayers in other communities.

In terms of external comparables, the Employer defends its selection of a comparable group and argues against the Union's group. Regarding the Union's group, they note their failure to include any financial data concerning the nature of the taxpayers in these communities. They suspect this is because the Union recognizes the differences in the citizenry. The communities of Shorewood, Whitefish Bay, Fox Point, Bayside, River Hills, Glendale, and Mequon are populated largely by professional and white-collar individuals with healthy incomes. The same can be said about Brookfield, and to a lesser degree, Menomonee Falls and New Berlin. On the other hand, the Village has offered the primary comparables of Cedarburg, Franklin, Hales Corners, Muskego, and Port Washington. In short, they believe it to be a more fair group than the Union's since it tries to take into account the nature of the taxpayers in the community, as well as the nature of the community itself.

When comparing the wages of Police in Germantown and its comparable communities, the Employer arrives at a number of conclusions. They are that the Village (1) pays a competitive maximum wage and (2) pays a superior wage rate when the officer first starts with the Department. Moreover, they note there isn't a great degree of turnover.

The Employer also relies on the factor of internal comparables, which they believe is especially strong in this case because of the other units' acceptance of the health insurance changes. These units accepted the health insurance changes (including the \$25,000 cap) without the additional quid pro quo requested by the Union. The DPW agreed to wage increases of 3.5% in 1994, 3% in 1995, and 3% in 1996. The Telecommunicator's contract requires close analysis since the Union claims that members of this unit received a 7% increase. First, it is noted that their 1992-93 contract contained the health insurance changes. Thus, the across-the-board wage increase for 1994 and 1995 does not include any health insurance changes. As for the 1994/1995 increases, the Parties recognized the dramatic changes in the technical equipment and responsibilities of Telecommunicators. Thus, the Employer added an additional salary step to recognize the experience and added responsibilities of senior Telecommunicators. In the case of the Police, there is

no mutual recognition that a jump in pay is necessarily due to technological changes.

The Employer also appeals to private sector comparisons, the cost of living, and total compensation. They contend all of these factors support their offer. For instance, private sector increases averaged around 2.3%, and the cost of living is closer to their offer.

Under the so-called "catch-all" criteria, the Employer presents extensive discussion concerning the Union's demand for a quid pro quo for the insurance changes. In this regard, they suggest that the Arbitrator must determine the value of the changes to the insurance program agreed upon by the Parties. While the Union demands 1%, they have not--when requested to--provided any explanation why the Union believes 1% is appropriate. The evidence shows, in the opinion of the Union, that, in most cases, employees will put more money in their pocket as a result of the insurance change, and even under the rare worst case scenario, employees would only lose \$200 compared to the old health insurance plan, a .5% cost compare to their average annual wage. The new system also just makes sense and is in the best interest of the public. Finally, both the internal and external comparables do not support the Union's demand for a \$50,000 lifetime cap on psychiatric benefits.

Last, the Employer responds to a catch-up argument they anticipate from the Union. The Employer seeks to explain why Germantown dropped in rating in 1988 and 1989. The Parties agreed to below-average increases in exchange for a reduction in hours. Going from a 5/2 schedule to a 4/2 schedule resulted in ten days more off per year. Furthermore, the Parties agreed to roll the holiday pay into the wage rate. They added 88 hours of holiday pay to the wage rate, but then agreed to subtract back out 93.5 hours for purposes of comparison with other municipalities. Since the deal was struck, there has not been a substantial erosion in Germantown's new, lower relative rank. They contend this deal must stand and the Union cannot seek to undo it now.

IV. OPINION AND DISCUSSION

The final offers present essentially two issues. First there is the amount of the wage increase for the three years of 1993, 1994, and 1995. Also part of the wage increase issue is the Union's request for an additional 1% upon implementation of the new health plan. There is also the issue of the lifetime cap on psychiatric benefits. Clearly the more substantive issue of the two is the

wage issue. Virtually all of the Parties attention is directed at the wages, and as such, the lifetime cap matter falls into the category of a coat-tail issue. So goes the wages, so goes the lifetime cap issue. Neither offer is unreasonable in this regard, and thus, it is appropriate to let the wage issue control the outcome of this case.

There is also the ancillary issue of which municipal employers should be considered for purposes of Criteria "D." The Union accuses the Employer of a shot gun approach in choosing their comparables. On the contrary, the Employer's comparables were derived through a systematic methodology which is not necessarily apparent in the Union's evidence. The Arbitrator generally found the Employer's methodology appealing. However, only deeming other municipalities comparable to Germantown when they ranked within five places on the various indices seems a bit artificial. The Arbitrator used an approach similar to the Employer's but instead used a 20% cutoff as a reasonable range of comparability. If another municipality was within plus or minus 20% in at least four of seven categories (staff, population, average property tax bill, average property value, average community income, and equalized taxable property), it was deemed comparable. After this level of analysis was applied, side-by-side comparisons were done and an average was calculated to verify that the methodology produced a group of reasonable comparable communities. The following communities were found to be comparable: Brown Deer, Cedarburg, Port Washington, Grafton, and Muskego. The following chart verifies that these communities are within a reasonable degree similar in many essential respects:

<u>Community</u>	<u>No. of Staff</u>	<u>Population</u>	<u>Local Taxes</u>	<u>Avg Tax Bill</u>	<u>Avg Prop Value</u>	<u>Avg Income</u>	<u>Equal Value</u>
Brown Deer	16	12,484	\$4 1M	\$2,632	\$ 81,003	\$32,478	\$633M
Cedarburg	16	10,195	3 6	3,465	115,408	37,871	414
Port Wash.	17	9,610	2 6	2,996	91,979	30,111	313
Grafton	18	9,390	2.3	3,336	105,652	32,079	350
Muskego	<u>20</u>	<u>17,704</u>	<u>3 0</u>	<u>3,196</u>	<u>115,408</u>	<u>34,837</u>	<u>650</u>
Average	19	11,876	\$3 1M	\$3,125	\$101,890	\$33,475	\$472M
Germantown	16	14,633	\$3 5M	\$3,240	\$100,135	\$34,218	\$597M

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 also are 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, Mequon, Shorewood, Greendale, Fox Point, Bayside, River Hills, White Fish Bay, and Franklin. Hales Corner is too small in many respects.

The Employer believes the internal comparables to be an extremely important factor. The Arbitrator agrees that, generally speaking, the internal comparables are very important. They are particularly important where there is a well-established internal pattern, where there has been a history of like increases, and where adherence to the internal pattern won't result in unacceptable external wage relationship.

In this case there is no evidence of various units accepting identical increases. More importantly, it is difficult to say there is a pattern. Even though the DPW unit accepted the insurance changes without an overt 1% quid pro quo, as the Union proposes here, it is difficult to ignore the fact that the City offered 1% more over three years than it offers to the Police. The Dispatcher's contract contains many wage structure improvements, making it much more valuable than the City offer. Even without the step improvements, the Dispatcher settlement, as a result of the 3/2 split in 1993, provides increases of 11% on the rates and 10% on the money over the three years. This hardly establishes a controlling internal pattern. Indeed, the internal pattern, even discounting the step increases in the Dispatcher contract, favors neither Party's offer. The Dispatcher's rate increased 11% over the three years and DPW 10.5%. This is an average of 10.75%, exactly half-way between the City offer of 9.5% and the Union's offer of 12% (including the health care quid pro quo).

It is appropriate then to look at the external comparables. The average rate increase in the comparables (using the lift provided by split increases) is as follows:

	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>Total</u>
Brown Deer	3/2%	3/2%	N/S	
Port Washington	3.5		N/S	
Cedarburg	3/2	3.5/1	N/S	
Grafton	4.0	3/2	3/2%	
Muskego	<u>4.0</u>	<u>4.0</u>	<u>4.0</u>	
Average year-end increases	4.3%	4.625%	4.5%	13.425%
Employer offer (Difference to average)	3.5% (-.8)	3.0% (-1.625)	3.0% (-1.5)	9.5% (-3.925)
Union (Including 1% quid pro quo in 1994)	3.5% (-.8)	4.5% (-.125)	4.0% (-.5%)	12% (-1.425)

It can easily be seen from this data that the Union's offer is more reasonable. Neither offer matches the rate increases in the external comparables. The Union's offer is not a catch-up proposal as the City tried to label it. It is just trying to keep up. Thus, because the Union's offer is closer to the average increase, it is more reasonable. This is true even when the Arbitrator factors in the so-called quid pro quo for the insurance changes. The debate over whether quid pro quo is necessary is somewhat academic since the 1% is necessary just to keep the overall wage increase competitive.

The Employer appealed to the "interest and welfare of the public" criteria. Indeed, Germantown has experienced the tax consequences of urban sprawl--"property rich, cash poor." Property values go up due to pressure in growth, taxes go up as a result of increased property values, not to mention mill increases, all the while incomes don't advance by the same degree. Certainly this plight deserves consideration. However, it is noted even the increases under the Union offer is discernably less than the average. To the extent the taxpayers in Germantown deserve a break over similar communities, the Union's offer gives it.

Lastly, the Arbitrator must state that none of the other criteria sway him to believe the City offer is more appropriate.

AWARD

The Union's offer is selected.

Gil Vernon, Arbitrator

Dated this ___ day of May 1994.

*(Mr. Vernon's "Report and Fee Statement"
indicated the Award should be
dated 5-13-94.*

*WERC
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