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STATE OF WISCONSIN
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

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In the Matter of the Petition of	:	
TEAMSTERS UNION LOCAL NO. 695	:	
For Final and Binding Arbitration	:	Case 16
Involving Law Enforcement	:	No. 51913 MIA 1936
Personnel in the Employ of	:	Decision No. 28505-A
VILLAGE OF OREGON	:	
(Police Department)	:	
-----	:	

Appearances:

Teamsters Union Local No. 695 by Ruth Ann Stodola,
Business Representative, and Previant, Goldberg, Uelmen,
Gratz, Miller & Brueggeman, S.C., by Naomi E. Soldon, Esq.

Village of Oregon (Police Department) by Melli, Walker,
Pease & Ruhly, S.C., by Joann M. Hart, Esq. and
Deron R. Baumbach, Esq.

ARBITRATION AWARD

The parties have been unable to agree upon the terms to be included in their contract for the period January 1, 1995, through December 31, 1996. On December 5, 1994, Teamsters Union Local No. 695 (Union) filed a petition requesting the Wisconsin Employment Relations Commission to initiate final arbitration pursuant to Sec. 111.77(3) of the Municipal Employment Relations Act. The Commission caused an investigation to be conducted by a member of its staff. The Union and the Village filed their amended final offers on June 8, 1995, and on July 12, 1995, respectively. On September 5, 1995, the investigator informed

the Commission that the parties were at an impasse. The parties selected the undersigned from a panel of arbitrators furnished by the Commission; the undersigned was appointed to act as arbitrator by order of the Commission dated November 8, 1995. After notice had been given, the arbitration hearing was conducted at the Oregon Village Hall on December 6, 1995. Both parties presented sworn testimony and documentary evidence into the record, which was closed at the conclusion of the hearing. A transcript of the proceedings was provided to the parties and to the undersigned by December 26, 1995. The parties' initial briefs were exchanged through the arbitrator on February 9, 1996, reply briefs were exchanged on March 5, 1996. The Village requested the opportunity to respond to an argument briefed for the first time in the Union's reply brief. That response was received on March 15, 1996.

ISSUES IN DISPUTE

The Union said that there are two issues in dispute. First, the Union has proposed to change the police officers' work schedule from its present 6-2, 5-3 calendar to a 6-3, 6-3 work schedule. "Second, the Union proposed increasing the number of hours of vacation per week awarded from 40 hours to 48 hours to coincide with the new schedule." The Village added the Union's "trumped-up set of comparables," the need for quid pro quo and the allegation that the Union had attempted to amend its final offer during the course of the arbitration hearing as issues in

this proceeding. There is also a difference in the parties' wage offers. That difference is subsumed into the parties' work schedule and quid pro quo arguments.

THE UNION'S POSITION

The Union said that the most significant factor supporting its offer in this case is the comparison of its offer with the wages, hours, and conditions of employment of employees performing similar services in public employment in comparable communities. It said that the parties' bargaining history and the welfare and safety of the public also militate in favor of the Union's proposal. The Union cited Arbitrator Petrie's often quoted statement, "[w]hile the Legislature did not see fit to prioritize the various arbitral criteria ..., it is widely recognized that the comparison criteria is normally the more persuasive single factor to interest neutrals, and intraindustry comparisons are normally the most persuasive types of comparisons The same also applies under the parallel criteria enumerated in § 111.77, Wis. Stats."

The Union said that the parties had agreed upon DeForest, McFarland, Verona, and Waunakee as comparables, but said that Fitchburg, Middleton, Monona, Stoughton, and Sun Prairie should also be considered comparable. The latter are all located in the same geographic area as Oregon, are all in Dane County, and, together with the agreed upon comparables, encircle the City of Madison. It said that Fitchburg is adjacent to Oregon.

Middleton and Sun Prairie are further from Oregon, but, they are roughly the same distance from Madison. It said that like Oregon, "these suburbs compete for employees in the same labor market, and all are affected by the same economic conditions." The Union said that Monona's population (8546) is similar to Oregon's (5760). Stoughton, with a population of 9916, has a substantially similar property tax base of \$329,094,800 compared to Oregon's \$215,644,700. It argued that Oregon, DeForest, McFarland, Waunakee, Monona, Stoughton, and Fitchburg were found to be comparable to Verona in a 1994 arbitration decision.

The Union presented a summary of the population, full-tax value, number of police officers, work calendars, and vacation time for all of its proposed comparables, and argued that, "all communities comparable to Oregon utilize a 6-3 schedule as the Union proposes in its final offer." It said that all of the comparables agreed upon by the parties have a "6-3" work schedule. Consistent with their use of the 6-3 schedule, all comparables except two award vacation on the basis of 6 day weeks. It said that those two, Verona and McFarland, have more favorable vacation benefits than Oregon.

It argued that some of the Village's proposed comparables, Brodhead, Edgerton, Evansville, and Mount Horeb, and its proposed secondary comparables, Dodgeville, Lake Mills, and Milton, should not be considered. Of these, it said, only Mount Horeb is in Dane County, and all of the communities are remote from Oregon. The Union said that these communities do not share a common labor

market. The Union cited arbitral authority, "that geographic proximity is especially important in cases involving police officers." It noted that the arbitrator, in the 1994 case involving Verona, found that Milton and Dodgeville were not comparable to Verona.

The Union reviewed population, full-value tax data, numbers of police officers, work schedules, and vacation benefit information for Brodhead, Edgerton, Evansville, Mount Horeb, Dodgeville, Lake Mills, and Milton. It argued that the Village's own set of comparables does not support maintaining a 6-2, 5-3 work schedule in Oregon. It said that work schedules in Brodhead and Evansville provide fewer potential work days than the Union's proposed 6-3 schedule. It said that the 5-2, 5-3 schedules in Edgerton, Mount Horeb, and Milton result in the same number of officer work days as the Union's proposal. It said that only the Dodgeville and Lake Mills' schedules "result in more officer work days per year than the Union's '6-3' proposal."

The Union argued that it had demonstrated a compelling need to change to a 6-3 schedule, and had offered quid pro quo to offset the expense of that change. It said that a 1991 Medford Police Department case which involved a proposed change in work schedules, supports the Union's offer. In that case, the arbitrator said that in the absence of the offer of an equivalent or greater buy out, the party seeking the change must demonstrate that, "the circumstances relating to that provision have changed, that there now is a need to make a change and that its proposal

is reasonably suited to making the needed change." In that case, the arbitrator did not find an equivalent or greater buy out. He found the changed shift would "provide the best protection possible for the public with the limited means of the department." In that case, the arbitrator found that the City's offer was preferable, because, "by reallocating patrol officers' shifts, the Employer will be simply better able to keep patrol officers on patrol while some are absent."

The Union said that its proposal to change to a 6-3 schedule, satisfies several compelling concerns. It said the proposal is fairer to officers who work the third shift. It "is also less taxing physically and mentally on officers whose responsibilities and stress levels have grown substantially over the years." It cited evidence that the Chiefs of Police and Sheriffs' Associations are concerned about "the welfare of police officers in light of mounting stress on the job," and, that "officers increasingly have retired early due to mental fatigue." The Union argued that its proposal would benefit both the officers and the Village because, "well rested officers have higher morale, perform better in their jobs, and display higher motivation and initiative."

The Union said that its wage offer is a substantial quid pro quo. It initially sought two 3% across-the-board wage increases in January and July 1995, and two 5% increases in January and July 1996. It modified those proposals to "no more than 3% increases effective January 1, 1995, and July 1, 1995, with a

wage freeze in January 1996, and only a 2% increase in July 1996." The substantial modification of its wage request in January and July 1996, recognizes the expense associated with implementing the 6-3 schedule in 1996. It noted that the increased cost would result from each officer working 60 fewer hours per year under the proposed 6-3 schedule. It said that the Village's offer, which would maintain the existing work schedule and vacation benefits, and would increase wages by 3% in both January and July 1995, and by 3.5% in both January and July 1996, exceeds the cost of the Union's offer.

The Union cited a series of prior arbitration decisions which found that changes in work schedules had been justified because a quid pro quo had been offered. "Here, the Union has proposed wage concessions which substantially offset the expenses of its proposed contractual change. Under the circumstances, the Union's final offer should be accepted."

The Union said that the parties' bargaining history supports its offer. It pointed to the proposal it had made during the parties' prior contract negotiations. The Union's proposal in December 1992, called for a 6 day on, 3 day off schedule. Prior to that time, officers worked a 6-2, 6-2, 5-3 schedule. On January 1, 1994, that schedule was changed to the present 6-2, 5-3 rotation. The Union has proposed to modify that schedule to a 6-3, 6-3 rotation throughout the negotiations leading up to this proceeding. Under the terms of the prior agreement, the Village has the right to offer up to 200 hours of extra duty each

calendar year to temporary employees without first offering the duty to regular full-time employees.

The Union said that during this round of contract negotiations, the Village first sought "the unlimited right to use temporary and casual employees so long as their employment did not result in the layoff of any regular, full-time employee." It later offered to accept the Union's 6-3, 6-3 shift rotation in return for the unlimited right to use temporary employees. The Union said that the Village later modified its counteroffer to cap the use of temporary employees at 560 hours, and "thereafter conceded that a cap of 450 hours would be acceptable." The Union said that when the Village made its final offer, it withdrew those proposals and submitted its proposed wage increases without contract modifications.

The Union said that it had attempted to offer wage concessions for the proposed change in the work schedule. Its initial offer included the changed schedule, and 3% wage increases in each January and July 1995, and 5% wage increases in January and July 1996. Those wage requests were later reduced to two 3% increases in 1995, in a one year contract offer; a 3% increase in January 1995, and two 3% increases in 1996, for a two year contract; 3% increases on each January 1 and July 1, of each 1995 and 1996, for a two year contract; and finally 3% increases on each January 1, 1995, and July 1, 1996, a wage freeze January 1, 1996, and a 2% increase effective July 1, 1996. The latter offer is the Union's final offer in this proceeding.

The Union argued that the Village "tentatively agreed to the implementation of the '6-3' schedule on the condition that the Union agree to far greater use of casual and temporary employees without preference given to permanent, full-time officers." It said the Village can currently hire temporary employees more than 200 hours a year as long as regular officers are given the right of first refusal for the work. It argued that the Village's insistence on the increased use of temporary employees has no bearing upon the Village's scheduling demands and it is unreasonable.

THE VILLAGE'S POSITION

The Village outlined certain arguments and facts relative to the parties' bargaining history, the composition of the Oregon Police Department, and the Department's responsibilities in the introductory sections of its brief. Relevant parts of that information are included in the summaries of the Village's arguments below.

The Village said that this bargaining unit should be compared primarily with other police bargaining units located in municipalities within 25 miles of Oregon, with similar populations, similar numbers of bargaining unit members, similar numbers of patrol officers, and similar tax bases. It reviewed that data for each its primary and secondary comparables and for those municipalities which had been submitted by the Union and objected to by the Village. That data is reproduced on Table I below.

TABLE I

MUNICIPALITY	1994 CENSUS ESTIMATE	NUMBER OF BARGAINING UNIT OFFICERS	NUMBER OF PATROL OFFICERS	1994 TAX BASE \$
VILLAGE'S PRIMARY COMPARABLES				
Brodhead	3,171	5	5	70,935,300
DeForest	5,890	8	6	214,566,100
Edgerton	4,324	7	7	107,957,900
Evansville	3,378	6	6	101,717,500
McFarland	5,668	9	8	234,102,100
Mt. Horeb	4,624	6	6	173,296,900
Verona	5,939	8	8	238,576,900
Waunakee	6,918	7	7	294,451,500
Average	4,989	7.00	6.63	179,450,525
Oregon	5,602	8	6	215,644,700
VILLAGE'S SECONDARY COMPARABLES				
Dodgeville	4,112	8	7	175,009,100
Lake Mills	4,322	8	8	152,673,300
Milton	4,676	6	6	125,563,900
Average	4,370	7.33	7.00	151,082,100
Oregon	5,602	8	6	215,644,700
COMPARABLES PROPOSED BY UNION BUT DISPUTED BY THE VILLAGE				
Fitchburg	16,970	17	17	746,466,900
Middleton	14,740	19	15	805,973,800
Monona	8,546	15	15	475,244,500
Stoughton	9,916	19	14	329,094,800
Sun Prairie	16,986	22	20	666,585,400
Average	13,432	18.40	16.20	604,673,080
Oregon	5,602	8	6	215,644,800

The Village said that its proposed primary group compares favorably with Oregon in each enumerated category. It noted that Brodhead, Edgerton, and Evansville are in Rock County which adjoins Dane County. It said that these Rock County communities are closer to Oregon than some of the Union's proposed comparables. It said that there is no reason to exclude these communities from the comparable pool. Both Edgerton and Evansville were considered comparable in the only previous arbitration award involving this unit. In that 1978 award, the arbitrator found that, "there is no basic reason for limiting the comparisons to communities in Dane County." The Village said that given expanding local markets today, it makes even more sense to include these comparables.

The Village said that its proposed secondary comparables: Dodgeville, Lake Mills, and Milton are all located within 40 miles of the Village of Oregon and compare favorably. It said that the arbitrator had found Lake Mills comparable in 1978, based upon labor market considerations. Those same considerations apply to all of the secondary comparables today.

The Village said that it agreed that DeForest, McFarland, Verona, and Waunakee are comparable. It noted that the Union had not included Mount Horeb, Brodhead, Edgerton, and Evansville, but, it had proposed five communities which are disputed by the Union. It reviewed the data relating to the Unions' comparables set out on Table I above and argued, "[t]he profound disparities between these proposed comparables and the Village of Oregon make

it evident that they are inappropriate." It was critical of the Union for excluding Mount Horeb, which is closer to Oregon than DeForest, Sun Prairie, and Waunakee. The Village cited dicta from a 1994 Verona Police Department case in which the arbitrator said that Mount Horeb appeared to be comparable to Verona.

The Village said that during the 1978 arbitration proceeding, the Union had argued that "comparables could not be limited to Dane County." In that case, the arbitrator agreed with the Union. It said that it is obvious that the Union selected comparables "solely on whether the police departments ... have 6-3 schedules." It argued that nothing else could explain the Union's list of comparables. It reviewed the fact that the Union had presented Fitchburg, Middleton, Monona, Stoughton, and Sun Prairie, and excluded Mount Horeb. "Mount Horeb does not have a 6-3 schedule, but the larger Dane County communities do The Union's attempt to selectively impose an artificial geographic restriction to determine comparables, despite such significant disparities between its proposed comparables and Oregon, is unpersuasive and should be rejected."

The Village said that the Union had cited two arbitration awards to support its proposed comparables and referred to a third award. It reviewed those awards and argued that they do not support the Union's arguments. It noted that in a 1993 Waunakee case, Arbitrator Malamud had expressed concern that the parties had agreed that Middleton and Sun Prairie were comparable, because, they "are much larger than Waunakee, in

population, in size of department, in size of the tax base." In that case, the arbitrator excluded Fitchburg because he didn't want "larger municipalities dominating the comparability list." The Village noted that Arbitrator Stern had shared Malamud's concern in another Waunakee case just one year later when he said that "[t]he most sensitive comparison in the relative position of Waunakee to the other smaller comparables."

The Village said that in the other case cited by the Union, a 1994 Verona Police Department award, Arbitrator Malamud excluded Middleton and Sun Prairie "because they would inordinately skew the comparability pool towards the larger departments." It argued that the Village's proposed "comparables are the proper basis for comparisons in this proceeding."

The Village reviewed the work schedule issue. It has been "a hot topic" during the last two rounds of contract negotiations. "Prior to 1994, the work schedule was 6-2, 6-2, 5-3. In negotiations leading to the 1993-94 contract, the Union bargained hard for a straight 6-3 schedule. The Village bargained equally hard to maintain the status quo. However, based primarily on the Village's concession, the parties mutually agreed to a 6-2, 5-3 work schedule." The Village said that the new schedule reduced each officer's annual number of hours by 60, or 360 hours for the department. The Village said that it was surprised, in view of the significant concessions it made during negotiations over the prior contract, when the Union announced that its priority in this contract is a 6-3 schedule. "Under the

Union's 6-3 schedule, the Village would again lose 60 hours per officer, or a total of 480 hours per year for the eight officers in the unit." The Village said that it had attempted to negotiate changes in the existing 200 hour cap for the use of casual officers in return for a 6-3 schedule. "The Union made it clear that it would not agree to any increase in the 200 hour cap."

The Village cited authority for the proposition that a party who seeks to change the status quo through arbitration must show the need for the change. It said that the Union had failed to meet that burden. It said that the Union claims "that a 6-3 schedule is more 'physically and mentally' beneficial because 'a six-day stretch is an awful long stretch' and the 6-3 schedule allows for more 'recovery time'." It asked "why, if six days is such a 'long stretch' [the Union] would want to go exclusively to six-day shifts under their proposed 6-3 schedule." It said that the Union didn't explain why the present 6-2, 5-3 schedule doesn't provide sufficient "recovery time." The Village said that neither the Police Chief nor a Union witness were aware of morale problems or of people leaving the department because of the present work schedule. "The Union simply presented no evidence to support a need to change the work schedule."

The Village noted that five of eight full-time officers also have part-time jobs, "mostly as officers for other law enforcement agencies." It argued that it is odd that police

officers who need more recovery time from stress related jobs work for other law enforcement agencies on their days off.

"Finally the 480 hours lost by virtue of the Union's proposed schedule change would presumably have to be made up somehow." The Village said that the additional vacation time would result in the loss of 136 hours in addition to the other 480 hours. The Village said that the Union had refused to remove or reduce the restrictions on the use of casual part-time employees to fill overtime and extra duty shifts. It argued that the Union wants to keep the extra overtime generated by the new schedule for regular officers. "The officers would in effect be working the same amount of hours under the Union's offer as they do currently, but would simply work less of those hours as 'regular hours' and more of them as overtime hours." It argued that this would result in longer shifts and back to back shifts or split shifts. If the Union is actually concerned about job stress, it would permit the Village to relieve these pressures with the use of casual employees. "Instead, it wants to have its cake and eat it too."

The Village cited a 1992, Winnebago County (Sheriff's Department) decision by Arbitrator Petrie, "[i]f an interest arbitrator concludes that the proposed change would not normally have been acceptable at the bargaining table without a quid pro quo flowing from the proponent of change to the other party, he will be extremely reluctant to endorse the proposed change." The Village noted that the parties' contract has provided that

changes in the work schedule have been subject to mutual agreement since 1977. The only time that the work schedule has been modified since that time, was through negotiations leading up to the expired contract. The Village said that after the Union negotiated that change during the last round of negotiations, "the Union immediately returned to the bargaining table demanding a 6-3 schedule as its first priority." The Village reviewed its efforts to negotiate changes in the casual labor cap which would have "offset the burden that the new schedules' additional overtime would cause. The Union refused to make any concession with regard to the limitations on use of casual employees." It said that there have been no allegations that the Village abused the use of casuals, that there are other problems relating to the use of casuals, or that increasing the use of casuals if the Village moved to a 6-3 schedule would cause a problem. "In addition, other comparable communities use casual officers without limitation."

The Village argued that the Union had not offered a quid pro quo for the proposed schedule change. "Despite the wage 'freeze', the proposed schedule change effectively increases hourly wages by 3% because the officers would be working less hours for the same annual wage." It argued that the reduction in regular shift hours would require the Village to incur additional overtime costs to maintain the current level of services. The officers would receive additional overtime pay for working what are now considered regular hours. "Taking a substantial benefit

for yourself that substantially burdens the other party, without giving any benefit to the other part in exchange is not a quid pro quo."

The Village said that the Union's argument that comparables support the proposed schedule change is not true. It said that five out of nine primary comparables have other than 6-3 schedules. None of the secondary comparables has a 6-3 schedule. "In addition, Chief Pettit, immediate past President of the Wisconsin Police Chiefs Association, testified that a 6-3 schedule is not a standard schedule." It argued that the Union had skewed the comparables by relying on Dane County communities that have no reasonable relationship to Oregon while excluding comparable communities such as Mount Horeb, Evansville, Edgerton, and Brodhead.

"The Union's proposed schedule change significantly impacts the Village's ability to provide protection and services to the community." The Village reviewed the negotiations which led to the parties agreeing to adopt a 6-2, 5-3 schedule effective January 1, 1994. It said that agreement had been a reasonable compromise given the parties' positions. That compromise "had a significant detrimental impact on the scheduling of officers and on the protection and service the Village is able to provide to its citizens." The Village said that it is not willing to compromise the community's needs further by moving to a straight 6-3 schedule without a demonstrated need and without a proper quid pro quo.

Of the eight full-time police officers in this unit six are regularly scheduled for patrol duty. The Village said that it is committed to provide one officer to the Oregon School District for D.A.R.E. instruction and school liaison programs in the schools. The Village received a grant which requires it to provide an officer 40 hours a week to staff community-oriented programs, none of the 40 hours can be spent on routine patrol duty. The Village's most recent hire was hired to cover patrol hours lost to the community liaison program. Another officer is required to spend a minimum of 32 hours a week on court services, investigation and follow-up. These duties were formerly provided by the Sheriff's Department. When the Sheriff stopped providing those services in August 1993, "the Village had to hire someone to do so."

The Village lost 360 scheduled hours when it agreed to the present 6-2, 5-3 schedule starting in 1994. The Village said that the Union's offer in this proceeding would result in the loss of 480 shift hours and an additional 136 hours to vacation benefits. The loss of these 616 staff hours combined with 360 hours lost in 1994, would result in a total of 976 hours "in the two year period from 1994-1996. The additional loss of staff hours will result in a significant reduction of services to the community. Investigative time and selective enforcement initiatives would be the most hard hit." The Village argued that these are areas where there are demands for increased services. It said that the loss of scheduled hours will also require

regularly scheduled shifts to cover for officers' sick leave, vacations, and training. Because of the 200 hour cap on hiring casual employees, the Village will have no alternative to either paying overtime or reducing services.

The Village cited two prior arbitration cases to support its position. Most in point is a 1991 award in which the arbitrator said that while employees have a legitimate interest in a schedule which provides as many days off as possible, the main purpose of the police department "is to provide the best protection possible for the public with the limited means of the department." It argued that in the two cited cases, the arbitrators found the municipalities' interests were sufficient to change the status quo. "Here, because of similar public interests, the Village seeks only to maintain the status quo."

The Village said that the Union's effort to add an additional eight hours to each week of vacation would be a significant change. It argued that changing the vacation schedule from 40 to 48 hours after one year, 80 to 96 hours after two years, and from 120 to 144 hours after five years would change the status quo. "The Union presented no evidence whatsoever to support a need for its proposed vacation schedule change." The Village said that the fact that the Union argued that its proposal, which would result in the loss of 136 work hours, "is not a change to the status quo is tacit acknowledgment that it cannot establish a need or a quid pro quo for its proposed increase in vacation benefits."

The Village said that relevant comparables do not support the argument for a six day vacation schedule. Only two of the four comparables that were proposed by both parties, which have 6-3 work schedules, also have six day vacation weeks. The other two have five day vacation weeks despite their 6-3 work schedules. The Village said that the other municipalities that the Village had relied upon to support its vacation argument are not comparable to Oregon in any meaningful way. In one of those municipalities, Stoughton, the six day vacation schedule came into effect through bargaining.

"A change to a 6-day vacation schedule will result in the loss of 17 days, or 136 staff hours, by the end of 1996." This loss would compound the Village's problems in maintaining current levels of service.

The Village said that its offer would provide higher annual and hourly income than the Union's offer. It argued that if the officers need more income, "it only makes sense that the officers would rather receive an actual annual wage increase instead of an artificial increase in their hourly rate caused by simply working less hours per year." It said that the Village's final offer would provide from \$1,000 to \$1,200 additional income each year for each Oregon police officer. It said that officers would work fewer hours for a considerably lower annual wage under the Union's offer. It argued that the officers would have to work additional hours of outside employment to earn an annual wage commensurate with the Village's offer. "That result is

antithetical, not only to the Union's alleged need for the schedule change, but to the financial interests of the police officers as well."

The Village said that its patrol officer "wages rates have historically ranked at the low end of its comparables, and below the average of the comparable rates." ... "The overall effect of the Village's wage offers for 1995 and 1996 is to maintain its standing relative to its primary comparables, and modestly address its loss of ranking in each category since 1992." It said that under the Village's offer, both the starting and top rates would rank six out of nine in 1996, compared to rankings of eight out of nine under the Union's offer. It said that the Village's wage offer will help combat high employee turnover, which is a matter of concern to the Village. The Village said that none of the three police officers who left the department during the last year and one-half left because of morale problems associated with the work schedule. All went to higher paying jobs elsewhere. "The Village's final wage offer is in part an attempt to combat police officer turnover. The Union's final offer does not address this issue."

REPLY BRIEFS

UNION - The Union said that its proposed change in the work schedule "is supported by a quid pro quo that substantially offsets the costs of the change." It reviewed the parties' offers and pointed to an analysis that shows the cost of the Union's 1996 wage offer to be \$2,206 compared to the \$11,576

additional cost of the Village's offer. "Over the year the wage cost of the Union's final offer is \$9,370 below the Village's."

The Union noted the Village's argument that, because the officers would work 1,947 hours a year under the changed schedule instead of their current 2,008 hours a year, the officers would be receiving a larger pay increase than the numbers indicate. It pointed to a wage analysis which it said "makes clear that the hourly decrease constitutes an 'effective wage increase that is significantly more cost effective than the actual wage increase proposed by the Village." That analysis showed that starting in July 1996, police officers would earn from 24¢ to 26¢ an hour more under the Village's offer than they would receive under the Union's offer.

The Union differed with the Village's assessment of how many officer work hours would be lost through the proposed schedule change. It calculated that 488 regularly scheduled hours and 112 vacation hours would be lost as a result of the change to a 6-3 work schedule. It argued that it was disingenuous for the Village to argue that all of these hours will have to be made up with overtime. "The Village may offer up to 200 hours of extra duty per calendar year to temporary or casual employees without first offering the duty to off-duty, regular full-time employees." It said that the Village may hire temporary employees more than 200 hours a year if full-time officers refuse to accept the work. "The Village, therefore, could use temporary or casual employees to fill in all of the 600 hours lost due to

the scheduling change." The Union said that if the Village hired casual employees to work 300 hours at the starting bargaining unit rate, it would cost \$3,807. If the Village replaced the other 300 hours by paying its regular officers their average overtime rate of \$21.26 an hour, it would cost an additional \$6,378 for a total expense of \$10,185. Based upon the foregoing assumptions, "the total cost to the Village of implementing the Union's final offer rather than its own, is only \$815."

At the time of the hearing, the Union's representative said that in addition to the implementation of its offer, the members of the bargaining unit should be awarded back pay from January 1, 1996, to reflect the difference in the hourly rate that the employees would have earned if the new work schedule had been in effect on January 1, 1996. The Village's representative said that "We would obviously object to that as an attempt to amend your offer." The undersigned invited the parties to discuss their positions on this issue in their briefs. Neither party discussed the matter in its initial brief.

In its reply brief, the Union said that the final offer selected herein will not be implemented for all of 1996. "If the Village's proposal is accepted, an award of back pay would be appropriate to ensure proper payment to the officers of wages from January 1, 1996." The Union argued that the same rationale would apply to implementing its offer. "Only the computation differs." It argued that the Union's offer involves a schedule modification and wage freeze which results in a 3% compensation

improvement. "Therefore, it would be appropriate in implementing the Union's offer to award this difference to the officers."

VILLAGE - The Village said that DeForest, Waunakee, Verona, and McFarland which are located between 23 and 8 miles from Oregon, are agreed upon comparables. It said that the Union's argument that Brodhead, Mount Horeb, Edgerton, and Evansville which are located between 22 and 11 miles from Oregon, do not share a relevant labor market, ignores reality and "completely ignores the only existing arbitration award between these parties." It argued that the Union made no attempt to argue that the latter communities "have the wrong population, the wrong tax base, or departments that are the wrong size." It said the Union's only remaining argument against comparability is that the communities are not in Dane County; when in fact, Mount Horeb is located in Dane County. "Further, the arbitration award the Union relies on notes that Mount Horeb is comparable to Verona and Oregon."

The Village said that the five Dane County cities recommended by the Union are "significantly larger in population, equalized value and department size." It reviewed the data set forth on Table I at page 10 above. "Because of the schedule issue in this case, comparability on size of the bargaining unit and the number of patrol officers is even more critical. A department with 15-20 patrol officers can deal much more easily with the coverage issue of a 6-3 schedule than can a department with 6 patrol officers." The Village said that the Union had

failed to argue that the five cities shared most of the factors for comparability. It noted that the arbitrator cited by the Union had found Monona and Stoughton to be only marginal comparables to Waunakee. It argued that while these cities might be marginally comparable to Waunakee, the largest of Village's comparables, they are not comparable to Oregon. The Village said that the only unifying factor among the Union's proposed comparables is that they all have 6-3 work schedules. "The Union's efforts to 'manufacture' comparability for a 6-3 schedule must be rejected."

"The Union's reference to 'net fewer officer work days per year' is misleading." The Village presented data that officers in four primary comparables and three secondary comparables work between 2,003 and 2,190 hours a year compared to 2,008 hours under the status quo and 1,947 hours under the Union's offer. It argued that contract language in three comparable communities permit much greater flexibility in selecting work schedules than is permitted in Oregon. "The comparables support the Village's offer to maintain the present schedule."

The Village argued that the Union had failed to establish any need for its proposed schedule change. It said that there is no evidence that the current work schedule is unfair to officers who are assigned to work the 11 p.m. to 7 a.m. shift. In response to the argument that a 6-3 schedule would "provide a benefit to the Village of 'well rested officers'", the Village said that "5 of the 8 officers will likely use their day off

working for another employer." It said that the Union had not even claimed a need for additional vacation time. The Village said that two arbitration awards cited by the Union "support the Village's proposal not to reduce officer's hours." The Village said that the Union had mischaracterized a third decision involving the City of Edgerton. It said that the arbitrator in that 1992 case "reached his decision on the very factors the Village relies on in this case: the need to maintain police coverage, and the need to look to annual wages to address turnover and officers working part-time." It said that the Village's offer in this case meets these objectives, while the Union's offer decreases coverage and depresses the annual wage.

The Village said that the Union's effort to apply the arbitrator's consideration of the parties' bargaining history in the Edgerton case to the present fact situation, is improper. It said that these parties had not reached any tentative agreement for a 6-3 work schedule. The Village said that it had made a major concession involving the work schedule during negotiations over the prior contract; that was the only schedule change in the parties' 14 year relationship. "There is no basis ... to force an involuntary schedule change on the Village."

The Village noted that in its reply brief, the Union argued that "[b]ecause implementation of the Union's final offer involves a schedule modification and wage freeze, the nature of the award should reflect the additional hours worked by the officers over and above the number they would have worked at the

rate of pay contained in the new contract." The Village argued that the Union had requested a modification of its proposed schedule change contrary to the provisions of Wis. Stat. 111.77(4)(b). The Village noted that it had objected to the Union's attempt to amend its final offer at the time of the hearing. It argued that the undersigned does not have the authority to do what the Union is prohibited from doing under the law. "The Union's argument that the arbitrator should order the Village to compensate the officers for 'additional hours worked by the officers ... at the rate of pay contained in the new contract' ignores the terms of the Union's own offer." The Village pointed out that the only rate of pay stated in the Union's offer is a monthly pay rate. "Compensating the officers at a higher hourly rate for 'additional hours' that they would not have worked had the Union's offer been implemented on January 1, 1996, would make the officers better off than they would have been had they worked the Union's proposed schedule."

DISCUSSION

The language of the Union's final offer is clear. If that offer is selected, the employees will receive the pay raises set forth in the offer, 3% on each January 1, and July 1, 1995, and an additional 2% on July 1, 1996. However, the proposed change in the work schedule can not become effective on January 1, 1996. If the Union were to gain a favorable decision in this case, the requested changes in the work schedule would become effective with the implementation of the arbitration award. If it is not

possible to implement any part of the award, that part of the award simply would not become effective.

There is no way to interpret the plain language of the Union's offer to entitle the police officers to an award of back pay. An award of the requested pay increase would not give effect to the Union's offer; it would constitute a complete rewrite of the plain language of that offer.

COMPARABILITY - The only arbitration award effecting this unit was entered in 1978. At that time, the parties estimated that the population of the Village of Oregon was between 3525 and 3674 compared to the Village's estimate of 5,602 and the Union's estimate of 5,760 in this proceeding. In that 1978 proceeding, the arbitrator was "inclined to think that in total the Union's concept of the labor market ... is slightly more realistic than the Village's." That market included Verona, McFarland, Lake Mills, Fitchburg, Evansville, and Edgerton. The arbitrator noted that the Village had suggested Edgerton and Evansville, he thought they were more comparable than Waunakee and De Forest, because the latter lie north of Madison. He also questioned including Lake Mills, "since it is about 40 miles away." At that time, all of the comparables proposed by both parties had less population than Oregon except for Edgerton (4,481) and Fitchburg (10,902).

Neither party relied upon those 1978 comparables in this proceeding. They did, however, agree that four of the communities which had been considered comparable by one party or

the other in 1978 should be considered comparable to Oregon in this case. Those municipalities, population estimates and number of police officers are as follows: Oregon - 5,760-8; De Forest - 5,890-7; McFarland - 5,668-8; Verona - 5,939-8; Waunakee - 6,918-7. Based upon those statistics, the four agreed upon communities appear to be ideal comparables. However, some of the agreed upon comparables are not as proximate to Oregon as some other municipalities about which the parties do not agree.

It is not surprising that each party appears to have padded its list of proposed comparables with some municipalities which appear to be more calculated to support its position than to provide a balanced pool of surrounding communities, bearing similar demographic characteristics within the relevant job market area. While De Forest and Waunakee appear to be located within a distance of 30 miles to the north of Oregon, it is necessary for the residents of those communities to drive either through or around the City of Madison and around one or more lakes to access the Village of Oregon. Some communities that were recommended by either the Village or the Union, though not as statistically similar, appear to be well suited to be considered comparable because of other demographics.

Mount Horeb with 4,624 residents and six patrol officers and Edgerton having 4,324 residents and seven patrol officers, are both statistically similar and more geographically proximate than De Forest and Waunakee. These communities were recommended by the Village. The Union did not give any reason for ignoring

Mount Horeb. It alleged that Edgerton should be rejected because it is in Rock County and shares a community of interest with Janesville. The Rock County line is not as much of an obstacle to transportation as Lake Mendota, and there is no evidence that Edgerton shares more of a community of interest with Janesville than it does with Madison. While Evansville with a population of 3,378 is smaller than any other comparable, it has the same number of patrol officers as Oregon; it is also geographically proximate. Evansville, Edgerton, and Mount Horeb should be included on the list of comparables.

If it was an objective to create a long list of comparables, Brodhead, Dodgeville, Lake Mills, and Milton might make good candidates. Since there appear to be other communities which are similar to Oregon and more geographically proximate to it than Brodhead et al., it is not necessary to reach out to include either the smallest community or the most distant communities recommended by the Village.

Monona, Stoughton, and Fitchburg were recommended by the Union, along with Middleton and Sun Prairie. These communities, with populations ranging between 8,546 and 16,986 are larger than Oregon. They also have larger numbers of patrol officers, between 14 and 20 compared to Oregon's six. Stoughton and Fitchburg are located immediately to the East and North of Oregon, both within 10 miles. These two communities have much in common with Oregon because of geographic proximity, relationship to the Madison market area, and per capita equalized value.

Monona, though slightly more distant than Stoughton and Fitchburg, is closer in population to Oregon than any of the other communities recommended by the Union. Though its per capita equalized value is substantially greater than Oregon's, it too shares the same community of interest and general job and market area as Oregon.

Statistical data for Middleton and Sun Prairie is very similar to Fitchburg's. However, Middleton and Sun Prairie are more removed from Oregon by distance and the location of other communities that are included on the comparable list. Fitchburg, though much larger, is adjacent to Oregon. Sun Prairie and Middleton are also much larger and have larger police departments than Oregon. Because they lack immediate proximity to Oregon, they are not as comparable as the other three larger municipalities which were recommended by the Union.

Excluding Middleton and Sun Prairie from the comparable list may appear to be arbitrary. It is no more arbitrary than excluding some of the communities which were recommended by the Village. If the objective was to select the largest possible list of comparables, it would be possible to justify including all of the communities that were nominated by both parties. It is the purpose, instead, to identify a reasonably balanced list of communities which appear to be similar to the Village of Oregon for the purpose of comparing the merit of the two offers in this proceeding. It appears that by including the four communities nominated by both parties, the three smaller most

proximate communities recommended by the Village, and the three larger most proximate communities recommended by the Union, the parties have identified a balanced list of comparable communities. DeForest, McFarland, Verona, Waunakee, Mount Horeb, Edgerton, Evansville, Monona, Stoughton, and Fitchburg are an appropriate pool of comparables herein.

WORK SCHEDULE - For the purpose of this analysis, the Union's proposal to convert to a straight 6-3 work schedule includes the officers' right to earn and accrue 48 hour blocks of vacation time instead of the 40 hour vacation benefit currently provided in Article X, Section 1. of the parties' contract. The Village calculated that the combined effect of the proposal would result in the Village losing 616 officer work hours per annum. The Union's calculation that 600 officer hours would be lost under the Union's offer appears to be the correct estimate. The loss of that many regularly scheduled work hours would, it appears, create serious problems in scheduling Oregon's police officers in a manner which would maintain existing levels of service.

The Village presented evidence that it lost 360 regularly scheduled officer hours when it converted to the present 6-2, 5-3 schedule on January 1, 1994. It presented evidence that the loss of those hours through negotiations for the prior contract changed the Village's operations to some degree. The testimony that reduced staff hours impacted the work schedule and required reducing officers' availability for investigative work and patrol

duty appears to be supported by Employer Exhibit #55. The Village presented testimony that it has been required to reduce some optional services in order to reduce the burden of additional overtime hours. That testimony is supported by Employer Exhibits #45 and #46 which also show that the Village had to increase its reliance on overtime for regular police officers from 644 hours in 1993 to 822 hours in 1994. It increased the use of part-time officers from 131.5 hours in 1993 to 181 hours in 1994 and to 230 hours through November 17, 1995. It seems obvious from the evidence in the record that the Village did not have much room for flexible scheduling after it agreed to reduce scheduled hours by 360 in January 1994. The loss of 600 additional hours in this proceeding would adversely effect the Village of Oregon's ability to meet its staffing requirements with its existing staff of eight police officers, which include six patrol officers.

The majority of comparable municipalities have straight 6-3 work schedules. There is evidence that a much higher percent of the police departments in Dane County have gone to 6-3 work schedules than police departments located elsewhere in the State of Wisconsin. It also appears that a higher percentage of larger police departments have gone to 6-3 work schedules than the number of smaller departments who have converted to this schedule. The fact that De Forest, McFarland, Verona, and Waunakee which are agreed upon comparables with similar sized police departments work 6-3 schedules lends support for the

Union's position. The fact that Mount Horeb, Edgerton, and Evansville with somewhat smaller populations and smaller police departments work 5-3, 5-2; 5-2, 5-3; and 2-2, 3-2, 2-3 schedules, respectively tends to support the Village's offer. The fact that the larger communities of Fitchburg, Stoughton, and Monona with their much larger police departments, work 6-3 schedules, supports the Union's position. That support is tempered because of the greater number of patrol officers employed by the latter communities.

The Union's proposed change to a straight 6-3 work schedule has slightly greater comparable support than the Village's proposal to continue the existing 6-2, 5-3 schedule. That support, however, is offset by the realization that implementing the 6-3 work schedule and improved vacation benefits would make it very difficult for the Village to maintain its current level of services with existing staff.

WAGE OFFERS - The Village's wage offer appears to have strong support among comparable communities. Because of the way that the parties presented evidence relating to wages and wage increases in the communities they recommended as comparables, it is not possible to make completely accurate wage comparisons for "the comparable group." The evidence shows that police officers in Oregon had lower starting annual wages than starting officers in nine of eleven comparables in 1995. The Village's offer would maintain that ranking in 1996. The Union's offer would result in Oregon having the lowest starting wage among all comparables in

1996. Top patrol wages in Oregon ranked tenth out of eleven in 1995. The average top salary would rank ninth behind Mount Horeb and McFarland in 1996 under the Village's offer. Oregon would rank tenth of eleven in 1996 under the Union's offer. There is evidence on the record that three Village of Oregon police officers left their positions to take positions in law enforcement with other municipalities between 1994 and the time of the hearing. Further, those individuals received wage increases as a result of their having changed employers. The foregoing facts support the Village's wage offer which will at least prevent further salary erosion at the wage benchmarks.

The Union has characterized its offer on the one hand as a continuation toward the adoption of a straight 6-3 work schedule which was arrived at through the parties' last round of contract negotiations. It recognizes on the other hand that it has proposed to change the status quo in relation to the work schedule. It is clear that a straight 6-3 work schedule has been the Union's top priority during the past three contract negotiations. While the revised work schedule is a high priority, the record does not demonstrate that the change is necessary. The testimony of Union witnesses that the proposed change is desirable, would make it physically and mentally easier on officers and would improve morale, is subjective and self-serving. There is substantial evidence that police departments around the state employ a wide variety of work schedules. Among comparable districts, schedules vary from 6-3 eight hour shifts;

5-3, 5-2 eight hour shifts; 5-2, 5-3 eight and one-half hour shifts; and 2-2, 3-2, 2-3 twelve hour shifts. The Union has not demonstrated that it is necessary for the Village of Oregon to adopt a straight 6-3 work schedule.

The Union has attempted to show that its offer to forego a wage increase on January 1, 1996, and to accept a 2% increase on July 1, 1996, compared to the Village's offer for 3.5% increases on January 1, and July 1, 1996, is quid pro quo for the revised work schedule. That would be a plausible argument if consideration could be limited to the annual financial impact of the two wage and hour offers. While the argument sounds plausible, it ignores evidence that the loss of 600 additional police officer hours would make it very difficult for the Village to continue to meet its present law enforcement commitments to the community with its existing compliment of eight police officers. Some of the lost hours would come at the expense of reassigning officers from regularly scheduled shifts, thereby foregoing investigative or patrol assignments. It would make it difficult for the Employer to fill shifts vacated by sick leave, vacation leave and in meeting unforeseen emergencies or exigencies. The Union appears to have recognized these pressures in its argument that up to one-half of the lost time might be made up through the use of part-time casual employees at the starting bargaining unit rate and the other one-half by paying regular officers their average overtime rate. Based upon those assumptions, the Union concluded that "the total cost to the

Village of implementing the Union's final offer ... is only \$815." That conclusion is based upon pure speculation. It simply is not possible to determine with any degree of accuracy the financial cost of implementing the Union's proposed schedule changes. It does not appear that the Union has offered a financial quid pro quo.

The most significant concern affecting the decision herein is not related to the direct financial cost of either of the two offers. The concern is that the changed work schedule would make it virtually impossible for the Village to continue to maintain its present commitments and maintain the present levels of police protection and security under the Union's proposed work schedule. The Union has not demonstrated that those proposed schedule changes are necessary. For that reason, the offer of the Village of Oregon shall be incorporated into the parties' 1995-1996 collective bargaining agreement.

Dated at Madison, Wisconsin, this 29th day of March, 1996.


John E. Oestreicher, Arbitrator