STATE OF WISCONSIN

MEDIATION/ARBITRATION AWARD

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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Mediation/Arbitration between LOCAL 305, MILWAUKEE DISTRICT COUNCIL 48, AFSCME, AFL-CIO and CITY OF WAUWATOSA	Re: Case LII, No. 24028 MED/ARB-304 Decision No. 16880-A

Appearances

For the Union, Local 305, Milwaukee District Council 48, AFSCME, AFL-CIO, Nola J. Hitchcock Cross, Attorney; Podell, Ugent & Cross, S.C., Continental Plaza, Suite 500, 735 West Wisconsin Avenue, Milwaukee, Wisconsin 53233. Ms. Cross was accompanied at the hearing by Staff Representative Earl Gregory, District Council 48, AFSCME, AFL-CIO, 3427 West St. Paul Avenue, Milwaukee, Wisconsin 53208.

For the City of Wauwatosa, Donald J. Cairns, Attorney; von Briesen & Redmond, S.C., 757 North Broadway, Milwaukee, Wisconsin 53202. Mr. Cairns was accompanied at the hearing by Mr. David P. Moore, Employee Relations Director, City of Wauwatosa, Memorial Civic Center, 7725 West North Avenue, Wauwatosa, Wisconsin 53213.

Background

The parties to this dispute have had a collective bargaining relationship for more than a decade. The Union is the exclusive collective bargaining representative of all regular full-time employees of the City of Wauwatosa employed in the Street Department, Mechanical and Maintenance Department, Electrical Department, Water Department and Park and Recreation Department, excluding seasonal employees, certain craft employees, and supervisors. The parties have a labor agreement that by its terms expired on December 31, 1978. It has been extended indefinitely. Bargaining for a new agreement commenced in September, 1978. When the parties failed to reach agreement after several negotiation sessions the Union filed a petition for mediation/arbitration with the Wisconsin Employment Relations Commission on January 18, 1979. A member of the WERC staff was unable to mediate a settlement during the month of February and on March 5, 1979 the Commission certified that conditions precedent to the initiation of mediation/arbitration had been satisfied as required by Section 111.70 (4)(cm)6 of the Municipal Employment Relations Act. Subsequently the parties selected the undersigned as mediator/arbitrator and notification was made on May 10.

A mediation session was held at the Memorial Civic Center at Wauwatosa on June 4. Final offers had been exchanged by

the parties as of February 20. During the mediation session on June 4 the number of issues was further narrowed, but six issues remained. A hearing date was set for June 26. Subsequently hearings were held on June 26, 27, and July 17. At the commencement of the hearing on June 26 the parties executed the stipulation attached as Addendum A, indicating narrowing of the disputed issues accomplished at the mediation session on June 4. The parties presented oral and written testimony at the hearing. A transcript was made. The parties agreed to exchange briefs through the arbitrator three weeks after the record became available. Because of some delays that were agreed to by the two attorneys the briefs were not finally exchanged until September 15.

The Issues

At the hearing the parties stipulated to the following six issues to be considered by the arbitrator:

Article XVI. Duty Incurred Disability Pay Section 1.

Employer Proposal:

> To be modified in conformance with the union proposal dated December 18, 1978.
>
> In the event an employee is injured and sustains a temporary disability, he or she shall receive full pay the first three days or less and one hour of pay for each other day out. If employee is off more than seven days, he or she shall receive only one hour per day missed and covered by payment under Chapter 102 of Wisconsin Statutes.

Union Proposal:

> An employee who sustains an injury while performing within the scope of his/her employment shall receive full pay for first three days of injury. If injury time off is covered by Workmen's Compensation, the employee shall receive the difference between Workmen's Compensation and his/her base pay. This additional payment by the City shall continue during the period the employee is temporarily total or temporarily partially disabled, not to exceed one year.

Article XIX. Life Insurance Section 3.

Employer Proposal:

> For employees who retire at age 65, a paid up life insurance policy in the amount of $2500 shall be provided for each employee. Employees retiring prior to age 65 must have 25 years of service and pay full cost of policy if they desire to obtain above coverage at age 65.

Union Proposal:

> For employees who retire at age 65, a paid-up life insurance policy in the amount of $3500

shall be provided for each employee. Employees retiring prior to age 65 must have 20 years of service and pay full cost of policy if they desire to obtain above coverage at age 65.

Article XXIII, Section 7, Overtime Rosters

Employer proposal:

Separate rosters shall be kept current for

A. Snow Plowing and Salting (separate rosters)

1. Drivers. The drivers shall include those qualified Equipment Operator I and II, Maintenance Man II. In the event the roster is exhausted and additional drivers are required, those qualified helpers (to drive) will be called in accordance with the helper list. In the event the list is exhausted, those employees in the next lower classification or anyone within the bargaining unit may be called.

2. Additional Drivers. These shall include those qualified in the Laborer II classification and Arborists I and II classifications. In the event the list is exhausted, those employees in the next lower classification or anyone within the bargaining unit may be called.

C. Definitions

1. A dead end street for purposes of this entire Agreement means a street in which the truck is unable to turn around and requires backing out.

Union proposal:

Separate rosters shall be kept current for

A. Snow Plowing and Salting (separate rosters)

1. Drivers. The drivers shall include those qualified Equipment Operator I and II, Maintenance Man II, Route and Field Operator. In the event the roster is exhausted and additional drivers are required, those qualified helpers (to drive) will be called in accordance with the helper list. In the event the list is exhausted, those employees in the next lower classification or anyone within the bargaining unit may be called.

2. Additional Drivers. These shall include those qualified in the Laborer II and Route Collector II classifications and Arborists I and II classifications. In the event the list is exhausted, those employees in the next lower classification or anyone within the bargaining unit may be called.

C. Definitions

1. A dead end street for purposes of this entire Agreement means a street in which the truck is unable to turn around and requires backing up.

Article VI, Section 3, Management Rights

Employer proposal:

> The Municipality has the right to schedule work and overtime work as required and to establish the methods and processes by which such work is performed in a manner most advantageous to the Municipality and consistent with the requirements of municipal employment and the public interest. Once the City has exhausted an overtime roster or list, the City may require the least senior employees on the roster or list to work. Such overtime shall include all daily, Saturday, Sunday, and emergency overtime work. Reasonable notice of such work will be made to employees by the City.

Union proposal:

> The Municipality has the right to schedule work and overtime work as required and to establish the methods and processes by which such work is performed in a manner most advantageous to the Municipality and consistent with the requirements of municipal employment and the public interest. Once the City has exhausted the plowing and salting overtime rosters listed in Article XXIII, Section 7 (a), and the City still needs more employees, then the City may require the least senior employees on the roster or list to come in to work.

Article XXII, Section 11, Cold Weather Work Option

Employer proposal:

> Delete section 11 of Article XXII, which says:
>
> In respect to employees in the Street Department, if the official temperature reading at Timmerman Field at 7:00 A.M. on the day in question is -10 degrees F. and calm, or -5 degrees F. with a 10 m.p.h. wind, the Municipality shall post a sign stating "Subzero Weather-Work Option" before the regularly assigned starting time of 7:30 A.M. Employees who elect not to work and to leave may do so and will be granted one (1) hour's pay at straight time. Employees who do not leave must then stay until 9:30 A.M. and, if the temperature and/or wind are still not above the stated amount, they may then choose to leave and be granted with two (2) hours pay at the straight time rate providing incidental services if work is available under cover. Any employee who desires to stay and work may do so, but he shall be allowed to quit work at any time during the shift and he will receive pay until the time he punches out. Any employee who has left may return at noon and reasonable effort shall be made to provide work for him. Before the start of the shift, a representative of the Municipality shall briefly explain the alternatives. The Municipality shall not discriminate against any employee who chooses to go home or stay at work.

Union proposal:

The Union would keep Section 11 in the Agreement and therefore makes no proposal on this issue.

Article XVII, Section 1, Holidays

Employer proposal:

Employees on a weekly or monthly salary shall receive the following holidays with pay after 30 days of employment, and employees not on a weekly or monthly salary shall receive the following holidays with pay after being employed by the City on a full-time basis for a period of not less than five (5) years:

Holiday	Celebration Date 1979	1980
New Year's Day	1/1	1/1
Memorial Day	5/28	5/26
Independence Day	7/4	7/4
Labor Day	9/3	9/1
Thanksgiving Day	11/22	11/27
Day Before Christmas	12/24	12/24
Christmas	12/25	12/25
Day Before New Year's Day	12/31	12/31
Three Floating Holidays		

Union proposal:

Employees on a weekly or monthly salary shall receive the following holidays with pay after 30 days of employment, and employees not on a weekly or monthly salary shall receive the following holidays with pay after being employed by the City on a full-time basis for a period of not less than five (5) years:

(a) New Year's Day (January 1)
(b) Memorial Day (Last Monday in May)
(c) Independence Day (July 4)
(d) Labor Day (First Monday in September)
(e) Thanksgiving Day(Last Thursday in November)
(f) Christmas Day (December 25)
(g) Last work day prior to Christmas
(h) Last work day prior to New Year's
(i) Good Friday
(j) Two Floating Holidays

All Holidays are guaranteed. In the event a holiday falls on Sunday, it shall be celebrated on Monday. In the event a holiday falls on Saturday, the holiday shall be celebrated on the preceding work day with the City retaining the option to schedule the employees to work at holiday premium and give the employees who work a day off in the future, to be taken off by mutual consent. If the City exercises this option, they shall give the employees no less than two weeks prior notice.

Discussion

The issues will be considered in the same order as they have been presented above.

DUTY INCURRED DISABILITY PAY

The 1977-78 agreement between the parties provided that an employee who was entitled to receive workers compensation would be paid at the rate of 95 per cent of regular weekly salary and that the employee would endorse his workers compensation check to the Employer. After 90 days the same arrangement would continue except that the employee would be charged one-third of a day from accumulated sick leave. The limit was 180 work days.

Recently an employee complained to the Internal Revenue Service about the Employer's practice of withholding taxes on these payments. The IRS ruled that withholding was improper under these circumstances, and for this reason both parties propose to change the existing clause.

The Union's principal contention is that what it proposes is the prevailing practice among public employers in Milwaukee County. Testimony was introduced purporting to show that the following jurisdictions within Milwaukee County with which District Council 48 bargains have arrangements for payment of full salary or wages for a period of one year or the duration of the disability following a duty incurred disability: Village of Brown Deer, City of Cudahy, City of St. Francis, City of Oak Creek, City of South Milwaukee, City of West Allis, Milwaukee Area District Board of Vocational, Technical and Adult Education, Sewerage Commission of the City of Milwaukee, County of Milwaukee, City of Milwaukee and City of Franklin.

In several other jurisdictions full payment of salary or wages was confined to the following periods: Village of West Milwaukee, 110 days, then only workers compensation benefits; Village of Whitefish Bay, six months, then prorated sick leave to supplement workers compensation benefits; Village of Hales Corners, 130 days; City of Glendale, six months, 80 per cent of full pay for next six months, sick leave as supplement thereafter; Village of Greendale, full pay for first 60 days of duty incurred disability, then only after review and approval by Village Board.

The Union introduced a table at the hearing that purported to show that (ignoring savings on life insurance and pension payments) the Union proposal would save the Employer 6.4 per cent when compared to the cost of the 95 per cent system in effect under the old agreement and that the Employer's proposal would save the Employer 64.9 per cent. These figures were based on differences in weekly payments for one individual assuming an average of gross pay for members in the collective bargaining unit.

The Union argues, therefore, that its own proposal conforms with duty incurred disability payments in comparable jurisdictions within Milwaukee County and that the Employer's proposal would result in a windfall savings and consequent deprivation for employees injured in the line of duty.

The Employer points out that the proposals provide identical benefits for an injured employee during the first three days of an absence. Since the Employer's final offer relates only to Section 1 of Article XVI, it is limited to 180 days rather than the one year proposed by the Union. The Employer's final offer also provides for a charge against sick leave after an absence of 90 days.

In supporting its proposal the Employer introduced comparisons based on average hourly rates for 1979 between the Union's final offer, the current 95 per cent plan, and the

Employer's final offer. These comparisons were based on two assumptions: a married employee with four deductions and a single employee. In the former case the Employer's calculations showed that the Union's proposal would result in payments of 121 per cent of net pay while the Employer's proposal would provide 97 per cent of net pay as compared with the 95 per cent of net pay provided under the current plan. For single employees the respective figures are 133 per cent, 111 per cent and 95 per cent. The conclusion drawn from these figures by the Employer is that while the Employer's final offer provides higher benefits than the current plan, the Union's final offer would result in benefits so high as to provide an incentive to remain away from work following a duty incurred injury or illness. The Employer also argues that the Union's proposal involves the adoption of different formulas based upon the number of dependents of different employees, a system that would be administratively cumbersome. In addition, the Employer points out that the Union figures ignore the fact that the Employer actually must reimburse the State of Wisconsin for all workers compensation payments made by the State.

The Employer introduced a copy of the letter received by the City Comptroller from the Milwaukee office of the Internal Revenue Service indicating that under the system that has been in operation under the agreement between these parties only the salary in excess of the workers compensation benefits is subject to withholding and reportable for federal income tax purposes. The Employer points out, therefore, that much of the comparable evidence concerning this system of duty incurred disability payments introduced by the Union in this proceeding is irrelevant for the reason that either those employers are acting illegally or they have revised their provisions for duty incurred disability to conform with IRS requirements.

The Employer also introduced evidence at the hearing over the Union's objection that its own proposal is identical to a proposal made by the Union on December 18, 1978 during the negotiations prior to initiation of this proceeding. The arbitrator overruled the Union's objection to its introduction on grounds that he had already heard about it during his own mediation efforts on June 4.

The Employer introduced the results of a survey of large private employers in Milwaukee County, backed up by copies of labor agreements where their employees were represented by unions, purporting to show that the Employer's final offer on duty incurred disability payments is comparable with the practice among those employers and that those employers do not provide supplemental pay similar to the payments proposed in this proceeding. (What was not completely clear in these comparisons, however, was the extent to which health and accident insurance plans carried by these employers provided benefits similar to those being considered here.)

LIFE INSURANCE

The insurance proposals relate to only one of four sections in the life insurance article of the agreement. The Employer provides life insurance to full-time employees to an amount equal to the next $1,000 above each employee's annual basic wage with a minimum coverage of $10,000. The issue on which the parties differ is only the amount of paid up life insurance to be provided to employees who retire at age 65 and the number of years of service required to attain coverage at 65 if the employee retires before 65. The

Employer proposes to retain the conditions of the 1977-78 agreement. This insurance policy is written by the Wisconsin Life Insurance Company.

The Union's position on this issue rests on conditions for this provision in comparable jurisdictions and on the effects of inflation and wage increases on the fixed amount of the Employer's insurance policy. The Union points out that many communities in Milwaukee County are covered by the State of Wisconsin Group Life Insurance Plan, which provides generally for premium payments by employers and a declining percentage of the amount of coverage after age 65. This plan provides for a 25 per cent reduction while at age 65, a 50 per cent reduction while age 66 and a 75 per cent reduction at age 67 and after. On the basis of average current wage rates this kind of a declining percentage under the State of Wisconsin Plan would result in an average benefit at age 67 of approximately $3,500 for members of this unit after retirement. And during the period from age 65 to 67, the amount of insurance under the State Plan would be larger. The Union, therefore, proposes that this Employer's life insurance policy coverage be raised to $3,500 after retirement to provide benefits similar to what the Union asserts are prevailing in the area among municipal employees. The Union argues that as long as inflationary forces continue, the figure of $3,500 will lag behind the amounts provided by the State of Wisconsin Plan and will require further renegotiation in the future.

In support of its proposal the Union points out that the following nearby jurisdictions with which the Union has labor agreements provide for group life insurance under the State of Wisconsin Plan: the Village of Greendale; City of Glendale; City of Milwaukee Sewerage Commission (although the amount stays at 50 per cent rather than being reduced to 25 per cent at age 67); Milwaukee Area District Board of Vocational, Technical, and Adult Education; Village of Shorewood; City of St. Francis; City of West Allis; and City of Cudahy. The City of Oak Creek also has the State Plan but pays only 50 per cent of the insurance premium for the employee in contrast to the 100 per cent paid by other employers listed above. Milwaukee County pays for a $10,000 policy for each covered employee and continues that amount after retirement at age 65. The City of Milwaukee pays for an $11,000 policy for each covered employee and continues 50 per cent of that amount after the employee retires at age 65.

In addition to an amount that approximates the $3,500 figure proposed by the Union upon retirement at age 65, the State of Wisconsin Plan provides that employees retiring before age 65 can qualify for the benefits after age 65 if they retire early after 20 years of service and then pay the premiums until age 65. The City of Milwaukee also has a 20 years of service requirement, while the service requirement for Milwaukee County employees is 15 years.

The Union's principal witness testified that the Employer's present limit of $2,500 after retirement at age 65 went into effect in 1974. Statistics were introduced purporting to show that the Consumer Price Index has increased by 50.7 per cent since that time while the Union is seeking a 40 per cent increase in the amount of coverage.

The Employer argues that adoption of the Union's life insurance proposal would constitute an unfunded liability risk for the City. The principal Employer witness at the hearing testified that because of the reduced service requirement from 25 to 20 years, the addition of a 40 per cent higher

benefit would require a 200 per cent increase in the amount of premium for this part of the insurance policy, i.e., the cost of insurance for retired employees. He testified that adoption of the Union's proposal would reduce the actuarial period for funding and therefore would "have a pyramiding effect of cost and . . .it was just too great a jump in one jump." In addition, the policy includes in its coverage all other City bargaining units, unrepresented employees, and employees of the school board as well. A change in the benefits for this group of City employees would be inequitable and troublesome.

OVERTIME ROSTERS

The difference between the parties on this issue relates to three subparagraphs in Section 7 of Article XXIII of the 1977-78 agreement. The Union would keep the same wording. The Employer would delete the classifications of "Route and Field Operator" from subparagraph A.1. and the "Route Collector II classification" from subparagraph A.2. In addition the Employer would change the final word in subparagraph C.1 from "up" to "out."

Since the Employer has initiated the proposal for a change in the existing language, its position will be outlined first.

At the hearing the Employer introduced a copy of a "Memorandum of Agreement" between these parties dated March 8, 1978. Among other items in that document were the following three sentences under the heading "Contract changes":

1. Establish a shuttle driver position at the rate of EOI.
2. Collection system employees consitute a separate work unit.
3. Collection work unit to be excluded from overtime roster for salting and plowing.

The Employer argues that the proposed exclusion of collection unit employees from the subparagraphs on the subject of separate rosters is consistent with the Memorandum of Agreement and that the Union's proposal is inconsistent with it. The issue arises as a result of an earlier proposal by the Employer to contract its garbage collection activity out to a private company. In the Memorandum of Understanding the Employer agreed not to contract out the garbage collection for a period of three years in consideration for certain "contractual modifications" set forth therein. The Employer maintains that to ignore this understanding and not to modify the labor agreement accordingly would cause the parties to assert rights under conflicting agreements. The Employer asserts that this has already happened in the case of Good Friday in 1979 when the Union insisted on the payment of triple time for working whereas

complaints were originally the cause of the City's proposal to contract garbage collection out. It is the Employer's position that the Union should honor the commitments reached in the Memorandum of Understanding. A change in the wording of the provision for separate rosters is one of them.

The other issue here is the substitution of the phrase "backing out" for "backing up" in Section 7.C.1. The Employer takes the position that this issue has existed since 1972. At the hearing a letter dated February 1, 1972 from the City Attorney to the Union's representative contained the following wording concerning the clarification of their existing agreement:

* * * * *

> Within the language. . . there are several items that need clarification to more properly express the intent of our agreement, and the following should be added to the agreement as definitions:
>
> (a) A "dead-end street" for purposes of this agreement means a street in which the vehicle is unable to turn around and requires backing out.

* * * * *

It is the Employer's position that the parties were in agreement on this issue but that in writing up the agreement a month after the letter was sent, the Union had used the word "up" rather than "out" and that although the agreement had never been changed, the Employer has maintained a consistent position that "backing out" was the phrase intended. The significance of this issue is that elsewhere in the agreement there is a requirement that two men are necessary to man a truck on a dead end street. In most situations a truck is able to turn around in a driveway or in a wide part of the street. This requires backing up for a short distance. Only rarely, according to the Employer's view, is it necessary to back out of such a street for the reason that it is impossible to turn around by means of a backing up and going forward maneuver. The Employer takes the position that be defining a dead end street as one where a truck is unable to turn around and must "back up" is to promote a featherbedding practice, since it is not unsafe for a truck to drive forward into a driveway or similar space and then to back up for a few feet so as to turn around. There are a limited number of dead end streets where this kind of maneuver is not possible and where trucks must exit by backing all the way out. One Employer witness testified that only in certain alleys was it not possible to turn around and where it was necessary to back out. The Employer agrees that in that situation safety requires a second employee as a guide as the truck is backed a comparatively long distance in getting out of that kind of a dead end street.

On the Employer's proposal to remove the classification of Route and Field Operator from Section 7, Subparagraph A.1. and the Route Collector II classification from Subparagraph A.2, the Union argues that these conditions are already in effect under the Memorandum of Agreement of March 8, 1978. This is a side agreement between the parties that the Union argues is in effect for a period of three years from its date. This is the period during which the City has given the Union an assurance that it will not contract out the garbage collection, in exchange for certain concessions in working conditions made by the Union. The Union believes that if the labor agreement itself is changed to incorporate the provisions of

the side agreement, the Union will have weakened its bargaining position so that at the end of the three years the Employer could exact additional concessions in exchange for another moratorium on its right to give the garbage collection to an outside contractor. In sum, on this issue the Union argues that what the Employer, in proposing that the two classifications not be included in the snow plowing and salting overtime rosters, is proposing to make permanent what is already in effect and will continue in effect until March 7, 1981. That date is beyond the contract period contemplated in this proceeding.

As to the substitution of the word "out" for "up" in Section 7. 5. C. 1., the Union asserts that the word "out" occurring in the letter of February 1, 1972 from Harold D. Gehrke to John Redlich was an inadvertance, as indicated by the use of the word "up" in the 1972 labor agreement that was signed by both parties after Mr. Gehrke's letter was written and received by Mr. Redlich. All labor agreements between the parties since that time have had the same wording and the term "backing out" occurred only in the February 1, 1972 letter.

MANAGEMENT RIGHTS

On this issue the Employer seeks to change Section 3 of Article VI, Management Rights, whereas the Union would leave the paragraph in question unchanged. The Employer would change the second sentence from the present wording that applies only to the "plowing and salting overtime rosters" in Article XXIII, Section 7., discussed above, to substitute the words: "an overtime roster or list." In addition, the final words of that sentence would change the words "come in to work" to "to work." The Employer would also add two sentences at the end of the paragraph to read: "Such overtime shall include all daily, Saturday, Sunday, and emergency overtime work. Reasonable notice of such work will be made to employees by the City." The present paragraph has been interpreted to require only employees on the plowing and salting overtime rosters to work overtime. The Union, at least, has interpreted this as emergency work. The new wording would introduce mandatory overtime for all overtime rosters or lists as well as for unscheduled overtime work.

The Employer's position on this issue results very largely from problems it has had in having collector crews complete their routes on time and the consequent complaints from citizens that their trash and garbage is not picked up on the day designated. Often times the work left uncompleted amounts to only a minor portion of the regular route. If the Employer were allowed to require overtime in those situations, it would be possible to complete the work in relatively short time. But since the City is not able to require collectors to work overtime, it is then necessary for them to return to the place where work stopped on the previous day in order to complete the route or to send other employees out to complete the work. This then results either in falling further behind or in unnecessary labor costs. The Employer believes that the problem could be cured very simply by mandatory unscheduled overtime. The wording proposed by the Employer would also make it clear that overtime work could be required for daily, Saturday and Sunday, and emergency overtime.

To buttress its proposal the Employer introduced comparable data purporting to show that five of ten major private sector employers in the Wauwatosa area have authority to demand that their employees perform overtime work. In cases where the employees were represented by unions collective bargaining agreements were introduced in evidence at the hearing to show these conditions.

The Union takes the position that the old agreement contains two provisions in Article XXIII, Overtime, that require

that rosters be used in the assignment of overtime. Since the Employer has not proposed to change these two provisions, the proposed change in the Management Rights clause will result in contract ambiguity that will spawn grievances and grievance arbitrations. The first of these clauses is Section 2 of Article XXIII, which states:

> Rotating overtime rosters shall be prepared, posted, and kept current starting anew every September 1 and then initially by seniority.

The other sentence in question is Subparagraph D of Section 7, of Article XXIII, which states:

> D. Additional Rosters
>
> Additional rosters may be created to cover overtime situations as deemed necessary by management. No employee shall be unreasonably denied his right to be included or excluded from such roster.

It is the Union's position that the Employer has not been observing the requirement that overtime be assigned from overtime rosters that are required to be prepared for different activities and that a change of the kind proposed by the Employer will run afoul of this requirement. (The Employer disputes this assertion by the Union and argues that the provisions cited by the Union relate to scheduled overtime and that the kind of mandatory overtime that would be contemplated by the proposed change would not be scheduled overtime and therefore not subject to assignment from a roster. The circumstance described above, the need to keep collector crews at work on overtime so that they can complete their routes, is an example of the assignment of overtime outside of a roster or list.)

The Union argues that rosters are necessary for the assignment of overtime work for the reason that some employees want the overtime and others do not. If rosters are kept, the assignment of overtime can be made in manner satisfactory to the employees. The Employer is proposing to change the agreement in such a way as to force overtime on employees who do not want it when it would be possible to obtain sufficient employees to satisfy the Employer's need for overtime work by adopting rosters for those situations. This kind of a provision would severely disrupt the family life of the employees and make planning of social events difficult because of the possibility of being forced to work overtime.

In response to the Employer's problem of not having routes completed on the days scheduled for pick-up the Union asserts that during the winter months pickups in Milwaukee are delayed for days at a time because of the practice there of using collection employees on snow removal equipment.

COLD WEATHER WORK OPTION

In exchange for deleting Section 11 of Article XXII, Premium Pay, the Employer offers to add the following language to the new agreement:

> A $20,000 cash bonus will be made to the street department employees appearing on the current seniority list within 30 days of the issuance of an arbitration award. The bonus will be paid to the 37 garbage crew employees on an equal basis or by any reasonable method proposed by the bargaining unit.

The Employer would like to eliminate the clause because of the difficulty it presents in directing the work force on a year-around basis. Evidence was presented at the hearing from a period including four work weeks during the winter of 1979 purporting to show that the clause was operative on ten of the twenty work days or on one of every two scheduled work days during that period. The evidence indicated that more than half of the garbage collection employees exercised the option in six of the ten situations. Since the result of exercising the option by employees is that garbage is not picked up on time, there are many complaints about poor service from citizens. The Employer asserts that the volume of trash decreases up to 40 per cent during the winter from the volume at other times of year. This allows the employees ample warm-up time. Therefore, the cold weather work option is no longer necessary. The City formerly had five man crews. That system did not allow warm-up in the trucks, which seat only three. Since negotiation of the side agreement of March 8, 1978 there have been three man crews and warm-up in the cab of the truck is permitted as long as it does not interrupt continuation of the work.

The Employer introduced comparable evidence purporting to show that of 24 other government jurisdictions within Milwaukee County, only 4 had a cold weather work option. These are Cudahy (where the supervisor has discretion to send employees home when the temperature is minus 10 degrees and where the work is to be made up later); City of Milwaukee (where if it is zero to minus 9 degrees with a windchill to 15 below zero, employees do not go out); Oak Creek and West Allis. The Employer also introduced comparable conditions of ten major private sector employers in the Wauwatosa area. Of these, 6 had employees who worked outside on a regular basis, but only one had a provision for employees to stop work outside at a certain low temperature threshhold. Of the eleven largest private sector employers in the vicinity (two of which were the same as on the other list), 9 had employees who worked outside on a regular basis, but none had a cold weather work option.

The Employer also pointed out that no department other than the Street Department had the option although other employees also had outdoor work. It was also asserted that only the collection employees in the Street Department exercised the option. Assignment of more men to do the work would not alleviate the problem of not completing the work for the reason that the additional men could also exercise the option not to work when the temperature or the wind chill factor reach the stipulated mark.

The Union disputes the Employer proposal on cold weather work option on several grounds. First it raises the issue of whether taking away this protection of employees would violate the Wisconsin Safe-Place Statute, which provides in various ways for protection of employees. The Union asserts that in accordance with this statute the Employer does not have lawful authority to require employees to work in conditions

Agreement on March 8, 1978, there were five man crews who went into garages and houses in the process of collecting and even received warm drinks from residents on cold days. The present three man system does not provide for entering any buildings where employees could warm up. And as to the City's argument that employees are allowed to warm up in the cab of the truck, the Union points out that there is no written regulation that allows this and that in any case the truck driver is not obligated to get out of the truck's heated cab. Thus if work must continue, only one other of the three man crew can get into the cab to warm up, and then only if the driver is willing to replace him on the outside work. The Union asserts that there have also been incidents of reprimands where supervisors thought employees were taking too much warm-up time in the cab.

In connection with the Employer's argument that the other City employees not in the Street Department do not have a cold weather work option, the Union asserts that the Employer did not show that other employees in the water, forestry, and parks departments encountered cold weather conditions similar to those encountered by collection employees. In addition, the Union asserts that the Employer's own testimony indicated that all such employees were allowed warm-up time in their heated trucks and that conditions for them were not comparable to the conditions encountered by the collection unit employees who sometimes were outside from the time they started work until they stopped for lunch four hours later. The Union also pointed to one case where a Street Department employee not engaged in collection work had exercised the option.

The Union dismisses the entire testimony of the Employer concerning conditions for employees in the private sector companies cited on grounds that none of them has a work force or working conditions that compare even remotely with that of the collectors in this case. As to the testimony of the Employer concerning the 24 nearby municipal jurisdictions, the Union points out that there were no specifics provided in the testimony, that not all of the jurisdictions have unionized work forces, that the existence of unwritten policies is unknown to the Employer, and that the testimony does not show whether the jurisdictions have garbage collection units. In any case, the Union argues, four other municipalities, including Milwaukee and West Allis, the two largest, do have cold weather work option clauses in their agreements.

The Union disputes the seriousness of work disruption alleged by the City as a result of exercise of the cold weather work option. In the first place, the City's assertion that there is up to a 40 per cent reduction in volume of trash during the winter months works both ways. Since there is less volume, there is less work. There are 41 employees in the collection unit. There are an additional 20 employees in the Street Department who fill in when needed. The Union asserts that if half of the 41 regular employees and half of the other 20 employees exercise the cold weather option on any particular day, there are still approximately 75 per cent of the regular force working to pick up what the City says is only 60 per cent of the volume of refuse that is picked up at other times of the year. The Union asserts that this situation adds up to no disruption of service at all as a result of exercise of the cold weather work option.

The Union asserts that there is no rationale for the Employer's choice of the figure 37 as appropriate to split up the $20,000 being offered in exchange for elimination of the cold weather work option. Since the option applies to

all 84 members of the Street Department, all should be eligible to have a share of the money if the decision favors the Employer position in this proceeding. The Union assumes that all 84 Street Department employees would expect to receive a share. This amounts to$238.10 apiece, a figure that the Union thinks is very small. In any case the Union argues that "It is simply unreasonable and contrary to public policy for the Arbitrator to allow the City of Wauwatosa to buy the employees' safety and health away from them."

HOLIDAYS

The essential differences between the Employer's and the Union's final offers on this issue are: 1. The Employer would specify the particular dates of 8 holidays for 1979 and 1980 while the Union favors language that would continue to be applicable in succeeding agreements. 2. The Uniom would include Good Friday as a holiday as well as two floating holidays while the Employer would favor a third floating holiday instead of Good Friday. 3. The Union would retain the paragraph quoted above which begins: "All holidays are guaranteed." The Employer would eliminate that paragraph from the agreement.

On this issue the Union considered itself to be the moving party. It argues that the specification of dates for particular holidays in the Employer proposal is an effort to require the Union to bargain on the observance of particular holidays each time the agreement is open for negotiations. The Union suggests that this is not only unneccessary but constitutes an effort to make this subject a continuing subject of controversy. The Employer's proposal to replace Good Friday with a third floating holiday would not only make employees in the unit work on that day but would allow the Employer to force the Union to negotiate a floater day off, which in turn would force employees to take the day at the City's convenience rather than on the actual holiday. Furthermore, it would eliminate the effectiveness of the premium pay provision (calling for triple time for Good Friday when worked, according to the Union's proposal). As to the elimination of the paragraph on holiday guarantees, the Union argues that if it is taken out of the agreement now simply because there are no weekend holidays during the prospective two year period, the Union would have to negotiate to have it returned to the agreement in the future.

The Union disputes the Employer's argument that a change is necessary to avoid disruptions of the kind caused by Good Friday and weekend holidays that must be observed on Friday and Monday. There has been a longstanding practice, according to the Union, of not picking up trash on Good Friday and there is no good reason offered by the Employer to change the arrangement as it existed under the old agreement.

The Union introduced copies of pages from municipal agreements in other municipal jurisdictions with which the Union bargains in Milwaukee County purporting to show that the following municipalities include Good Friday as a holiday: City of Cudahy, City of Franklin, Village of Greendale (one-half day), Village of Hales Corners, City of Milwaukee, City of Oak Creek, City of St. Francis, City of South Milwaukee, Village of Whitefish Bay, Village of Brown Deer, Milwaukee Area District Board of Vocational, Technical and Adult Education, the Sewerage Commission of the City of Milwaukee, the Milwaukee Board of School Directors, and Village of Shorewood. The Union pointed out that evidence introduced by the Employer indicated that seven of those jurisdictions named above pay triple time

for work on holidays. Not included in those seven is the City of Milwaukee, which pays 2 3/4 time for holiday work. The Union also points out that the majority of those agreements are worded in the manner proposed here by the Union, i.e., not specifying dates for those holidays occurring on the day before Christmas, etc.

In sum, the Union argues that Good Friday is a holiday commonly observed by other municipalities in the vicinity and that the Employer has not shown good reason for taking it away in these negotiations.

The City's position on this issue is influenced by the need to minimize interruptions in the collection of refuse by City work crews. This was one of the issues that precipitated the Employer's proposal in 1977 to contract the service to a private employer, a proposal that ultimately resulted in the Memorandum of Agreement of March 8, 1978 which among other things specified the calendar dates when holidays would be observed and which the Employer intended as a permanent change for Good Friday to be observed as a floating holiday. Although Good Friday typifies the problem that the Employer encounters when a holiday occurs just before a weekend, the provision for observing Saturday holidays on the previous day at a premium rate presents similar scheduling problems or alternatively results in excessive expenditures for premium rates for the day. The City's position is that the March 8, 1978 Memorandum of Agreement was intended to resolve this issue and that its provisions should be incorporated into the new agreement. The Employer also points out that the paragraph guaranteeing holidays has no significance during the 1979-80 contract period since no holidays will fall on weekend days. It is not the Employer's intention to attempt to mandate bargaining over all holidays in the future but merely to ensure that there is no question as to the dates they are to be celebrated.

As a further indication of the problem that holidays present, the Employer introduced a petition signed by many citizens and a letter protesting the effects in one area of the City of Wauwatosa when Monday holidays resulted in delaying garbage pick-up until the following Saturday, thus resulting in no pick-ups in eleven days followed by two pick-ups in three days. In this kind of situation the Employer had previously moved the whole schedule for the week back one day. But this had caused complaints that citizens were not able to depend upon the usual schedule for pick-up. In effect, the Employer argues that Friday and Monday holidays create difficult and irksome scheduling problems and that it is not unreasonable to trade Good Friday for a floating holiday.

The Employer emphasizes that it has no intention of removing the provision in the Premium Pay article of the agreement for triple time (double time plus holiday pay). The Employer introduced an exhibit at the hearing (backed up by copies of individual labor agreements where employees were organized) purporting to show that 9 out of 10 Wauwatosa area

Opinion

The issues will be discussed in the same order.

On the issue of Duty Incurred Disability the Employer appears to be depending heavily on three arguments: first, that its proposal is one that was earlier put forward during the bargaining by the Union; second, that adoption of its proposal would constitute a modest increase in the benefit for these employees while the adoption of the Union's proposal would provide an incentive for employees to malinger; and third, that the Union's comparable data indicate that most nearby municipal jurisdictions have provisions that the Employer knows are contrary to IRS regulations.

The first argument can be dismissed almost without comment. There is no reason why either party should be held by an arbitrator to a position that was taken earlier in the bargaining. Until the parties are locked into their final offers under the provisions of this statute they can change their postures in many ways, and since a party's position on one issue is usually related to some other offer or counter-offer at a particular stage in the bargaining, it would be a mistake for an arbitrator to give weight to an earlier proposal that is not now that party's proposal. As to the second argument, that the Union's proposal provides an incentive to stay on workers compensation after a duty incurred disability, it implies that there is no administration of the workers compensation program. While this argument cannot be lightly dismissed, I am not able to give it persuasive weight in view of the apparent widespread adoption of similar provisions by other municipalities in the vicinity (St. Francis, West Milwaukee (although for only 110 days), Hales Corners (although for only 130 days), Glendale (although for only 6 months and 80 per cent for next six months), and Cudahy. This brings me to the third argument of the Employer, that other jurisdictions paying full salary and taking the injured employee's workers compensation check are acting illegally. Here there was no evidence provided by either party to show whether or how these other municipalities had adjusted to the IRS ruling. In the absence of any such evidence it appears more likely to this arbitrator that they have maintained conditions more closely akin to the Union's than the Employer's proposal. So that on grounds of comparability there appears to be no evidence other than in the private sector to support the Employer's proposal while there is a great deal of evidence in the nearby public sector to support the Union's final offer. As I indicated to the parties at the hearing, I am not particularly impressed with comparable data from the private sector in this proceeding. While the agreements introduced by the Employer seemed to indicate that private employers in the vicinity do not have provisions for duty incurred disability payments of the kind prevalent in the public sector, it was not clear to the arbitrator how many of them handled this contingency through accident and disability insurance policies.

It should be noted that both the Employer's and the Union's final offers would treat minor injuries where the employee was out for three days or less in the same fashion. Both would provide full payment. Beyond that period there is a difference between the offers as to the length of time the benefits would run. On these two points it would have been preferable if the parties had introduced some data to show the amounts of time off that have been experienced by employees in this unit from duty incurred disabilities.

Although the Employer's argument concerning the Union's proposal as a possible incentive for an injured employee to stay away from work is not insignificant, on all other counts

it appears to me that the Union has presented more persuasive evidence and arguments to support its position on this issue.

On comparability grounds the Union's final offer on life insurance is keeping with prevailing practice in the area, although most other public employers appear to be covered by the State of Wisconsin Insurance Plan. That plan calls for insurance at retirement at about the same level as is being proposed here by the Union. The Employer's principal arguments against making a change are on grounds of expense and the difference adoption of the Union's proposal would make with reference to employees in other bargaining units who would still have the new existing conditions, i.e., $2,500 rather than $3,500. The latter consideration is important. Although on comparability grounds with nearby communities this arbitrator views the Union's proposal as preferable to that of the Employer, this issue is a toss-up because of its inconsistency with the insurance benefit for other City of Wauwatosa employees.

On Overtime Rosters there are two issues, the inclusion or exclusion of the collection classifications in the rosters for snow plowing and salting and for additional drivers, and the issue of whether to substitute the word "out" for "up" in the definition of a dead end street. On the first part, the use of the collection classification employees on these overtime rosters during the period of this agreement is moot since the Union concedes that the terms of the Memorandum of Agreement are in effect until March 8, 1981. The issue remains as to whether the parties intended at the time of negotiation of the Memorandum of Agreement to write its provisions into this labor agreement. Although the Employer argues with some logic that it would be inconsistent not to adopt the provisions in the Memorandum of Agreement in the labor agreement being considered here, it seems clear that the Union did not so intend. Given the fact that the Union concedes that all provisions of the Memorandum of Agreement remain in effect except for the holiday provisions, which the Union asserts applied only to 1978, there is as much logic in the Union's position that it should not give up the overtime roster issue permanently when the Employer has promised not to subcontract the work only for a period of three years. The Union therefore envisions itself as being put at a disadvantage on this issue, if the Employer's position is adopted, at the time when it will become necessary to negotiate with the Employer for a continuation of its commitment not to contract the collection out to a private employer. Since it is conceded by the Union that the collection classifications are excluded from the specified overtime rosters between now and March 8, 1981, I am inclined to favor the Union's position.

I am more troubled by the "backing up" versus "backing out" wording in the definition of a dead end street. The Union is on fairly solid ground when it argues that all agreements since 1972 have used the former term and that the only place where the term "backing out" appears is in the letter from Gehrke to Redfern dated February, 1972. On the other hand, the definition of a dead end street in the agreement can be viewed as at least ambiguous and at worst meaningless unless the term "backing out" is substituted for the present wording. In my view the best interpretation of the term "turn around" is maneuvering a vehicle forward and backward and thereby getting it into a position to face in the opposite direction. This includes "backing up" and therefore makes the definition at best ambiguous if "the truck is unable to turn around and requires backing up." According

to this interpretation the only way the phrase makes sense is to include the term "back out," since the truck requires "backing up" in the process of turning around. Conversely, another interpretation would be that there are certain dead end streets where there is enough room to turn a truck around without backing up; that is, where there is a circle that would allow a truck to move continuously forward with its wheels turned so as to make a circle and proceed back in the opposite direction. According to the testimony of the Employer's principal witness on this issue, there are no streets in the City of Wauwatosa where it is not possible to turn a truck around safely and get it headed in the other direction, although there are some alleys where it is necessary to back out for a considerable distance. But the Union produced two lists of dead end streets, one dated 1972 and the other 1975, which the Employer assertedly agreed required two men in a truck for plowing or salting. Although I am inclined to believe that the Union is insisting upon what amounts to the imposition of a featherbedding rule, it is difficult to understand why the Employer has allowed the wording to stand for so many years in successive agreements with this Union.

On grounds of increasing efficiency the Employer makes a persuasive argument for gaining authority in the labor agreement to insist on overtime for collection crews who have only a limited amount of work to perform in finishing a route when the alternative is to send another crew out to do it the following day. I am somewhat uncertain about the validity of the Union's assertion that the change would leave two applicable clauses on overtime rosters in another part of the agreement that would generate grievances and arbitrations because of conflicting language. The Employer makes a valid point, I think, when it insists that there are times when choosing employees from a roster to work overtime would not be appropriate. Although the Union asserts that the Employer is violating the agreement by not formulating rosters for certain types of overtime, the instances cited by the Union were not very convincing.

Although I would like to have more information about the failure of the Employer to formulate rosters for overtime work, I am even more dissatisfied with the Employer's insistence on the assignment of overtime for "all daily, Saturday, Sunday and emergency overtime work." I was not particularly impressed by the Employer's comparable evidence from ten large private employers in the vicinity of Wauwatosa. A common practice in private industry labor agreements is to call for mandatory overtime only on a limited or "reasonable" basis. In many cases mandatory overtime is limited to one hour per day. Of the five instances where the Employer claimed that mandatory overtime was allowed for private employers, one allowed only five hours per week, a second was based on this Employer's interpretation of very ambiguous language, and the remaining three were non-union shops where mandatory overtime could be expected.

In this case the Employer argues that authority is needed to require overtime for short periods at the end of the day. That being so, it is hard to see why it was necessary for the Employer to phrase its final offer as it did. For this reason my preference is for the Union proposal, even though I am persuaded that the Employer ought to be given the authority to insist on mandatory overtime on a limited basis. That is not what the Employer proposes.

Like the overtime and the management rights issues discussed above the Employer has taken the initiative in

proposing a change in the cold weather work option. As I am sure the Employer realizes, there is a problem involving the $20,000 payment that has been quite properly raised by the Union. Although the Employer proposes that the amount be shared by "the 37 garbage crew employees on an equal basis or by any reasonable method proposed by the bargaining unit," the fact is, as the Union points out, that there are about 80 members of the unit in the Street Department who are covered by the cold weather work option. Although it may be true that the option is exercised mostly by garbage crew employees, the Union asserts that if the Employer offer were accepted by the arbitrator and the amount of $20,000 were to be distributed by "any reasonable method proposed by the bargaining unit," it is the Union's judgment that all would share. In that case the amount being offered on a one-time basis is truly not very great. The Employer is in a position on this issue where it has in effect agreed that elimination of the cold weather work option from the agreement is a take-away for which the City is willing to make a payment. The Union, while not agreeing that it is possible to purchase a condition of employment that protects its members safety and health, thinks that the amount offered by the Employer is inadequate in any case. I am inclined to agree.

As to the issue of comparable conditions in other communities the evidence is mixed. Surely there are few communities who have such an option in their agreements in Milwaukee County. On the other hand, the two largest ones, Milwaukee and West Allis, both have it. Although no figures were offered by the Union, it is likely that the cold weather option applies to a numerical majority of garbage collection employees in Milwaukee County. As in the case of some of the other conditions where private sector conditions were introduced as comparisons, I give them little weight. Perhaps the Employer might have introduced some data relating to the Employment conditions of private waste disposal firms, but it does not seem to this arbitrator that the private sector employers cited by the Employer have employees who are faced with the kind of working conditions encountered by collection crews in municipal employment in Milwaukee County.

The Union considers this issue of the cold weather option to be the most important in this proceeding. I am inclined to agree that it is and that the Union's position is persuasive on grounds of comparability as well as other factors which I am compelled by the legislation to consider.

The holiday issue determination hinges upon whether I should agree with what I think is the general position of the Employer that the provisions of the Memorandum of Agreement of March 8, where appropriate, should be written into the terms of this agreement. The alternative is to credit the Union's position that the terminology of the Memorandum of Agreement on holidays is clearly applicable only to the year in which it was signed inasmuch as specific dates are written in. Apparently the Union and the employees it represents felt strongly enough in support of this position that they walked out briefly in March, 1979 over the issue of whether Good Friday was a guaranteed holiday and that if worked, they should be paid triple time. Although I would not view the payment of triple time by the Employer under this kind of pressure as evidence of agreement, it seems to me that logic is on the side of the Union in its argument that specification of the dates for holidays in the Memorandum of Agreement makes the holiday provisions therein applicable only to the year in which the Memorandum of Agreement was signed.

I am also impressed by the comparable data introduced by the Union showing that the prevailing practice in the agreements the Union has with other jurisdictions in Milwaukee County is to list Good Friday as a holiday. And although the Employer argues in its brief that the Union has not shown specifically that the units covered by these agreements include garbage collection employees, the Union asserts that such employees are included in those agreements with municipalities. On these grounds I believe that the Union has made a more persuasive case than has the Employer on the issue of holidays.

I have carefully considered the factors I am required to consider by the statute. Although the Union has raised an issue in reference to the cold weather work option about the lawful authority of the Employer in proposing to remove the provision from the agreement, I do not base my award on any interpretation of the law in that regard. In other respects I do not believe that my choice of either party's final offer would affect the lawful authority of the Employer.

I have discussed the stipulation of the parties above and have attached to this report a stipulation executed by the parties at the hearing.

I have carefully considered the interests and welfare of the public. In my opinion the choice of the Union's final proposal will not adversely affect the interests and welfare of the public. Nor will that choice result in the inability of the City of Wauwatosa to meet the costs of the settlement.

In my opinion the comparison of conditions considered in this proceeding with the conditions of other employees performing similar services in other communities in the vicinity of Wauwatosa is the most important factor here and has been most influential in arriving at my choice of the Union's final proposal. While I have agreed with the Employer in the case of the increase in the life insurance benefit that there is an inequity that will be created, I am required to choose one total package or the other. In my opinion the duty incurred disability, the holiday, and the cold weather option are supported by the comparable evidence introduced by the Union and must carry greater weight than the issue of life insurance.

The only place where cost-of-living has been considered herein was in connection with the life insurance issue. Were it not for the consideration of inequities with other City of Wauwatosa employees, the cost-of-living figures introduced by the Union to support the increase in the life insurance benefit from $2,500 to $3,500 would have been persuasive in my opinion in establishing the justification for that proposal by the Union.

Neither party raised the issue of overall compensation in this proceeding and in the absence of that kind of data I am unable to make an informed judgment on this factor. Since the issue was not raised by either party, however, I believe that I can assume that my choice of the Union's final offer will not increase overall compensation of these employees to an unreasonable level.

No doubt there have been substantial changes in one of the foregoing circumstances, especially in the cost-of-living, since the petition was filed, but none was raised for consideration by the arbitrator during this proceeding.

On"such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration. . ." I should state that except for duty incurred disability and life insurance, the issues in this proceeding represent Employer initiatives to change provisions in the party's agreement that have existed for some time. The cold weather work option has been in the agreement in some form since 1967. Although the parties appear to have had conflicting intentions, the specification of dates in the 1978 Memorandum of Agreement gives greater weight, in my opinion, to the Union's interpretation that Good Friday was taken away for only that year. The Union is on record in this proceeding as agreeing that the overtime roster proposal that the Employer wanted to write into the 1979-80 agreement is in effect until March 7, 1981. While there is some logic in the Employer's argument favoring use of the term "backing out," the other term has been in agreements between these parties for a very long time, and the Employer was not able to explain convincingly why the wording was not changed in 1972 if that is what the parties indeed intended. As to the change in the Management Rights clause, I am sympathetic with the Employer's intention, but a more modest proposal would have been more persuasive to this arbitrator rather than the sweeping one that would give carte blanche for "all daily, Saturday, Sunday and emergency overtime. . ." In other words, in considering "other factors... .normally and traditionally taken into consideration. . ." this arbitrator is very reluctant to choose a final proposal that appears to ask too much all at once. Although I have substantial sympathy with the Employer's desire to have conditions in its labor agreement that will improve productivity, in my opinion these Employer proposals would infringe too much on the rights and benefits that these employees have enjoyed in their collective bargaining agreements for many years.

Although I believe that I must choose the Union's final offer as the award in this case, I think that the Union should not be unmindful of the possibility that they have won the battle but as far as the collection employees are concerned, they may lose the war. I say this because I have a considerable amount of sympathy with the predicament of the Employer in trying to economize on its garbage collection services and to produce a service that will satisfy the citizens of Wauwatosa. Judging by what I heard at the hearing about citizen complaints, and knowing that the Memorandum of Agreement commits the Employer to only three years of refraining from contracting out its garbage collection, it seems to me that unless it is willing to continue some of the concessions in the Memorandum of Agreement, perhaps reinstating in the next agreement the kind of holiday schedule sought by the Employer, the Union may find that the management of the City of Wauwatosa and the community itself are determined to contract this service to a private company after March, 1981.

AWARD

The Union's final offer is accepted as the award in this proceeding.

Dated: October 16, 1979

Signed: David B. Johnson

David B. Johnson
Arbitrator

Joint Ex #1

ADDENDUM A

STIPULATION

The Parties agree to amend their respective "final offers" pursuant to the mediated agreement supervised by Arbitrator David Johnson.

Union agrees to delete items number 4 and 10 from their final offer.

City agrees to delete items number 15 and 16 from their final offer.

The parties agree to the inclusion of the attached language regarding work rule number (6) and the health insurance premium language in the 1979-80 agreement.

Earl F Gregory
For the Union

David Moore 6/4/79
For the City

Work rule #6 to be modified as follows:

Section A.

6. If an employee is going to be absent from work due to illness or injury (work connected or not) or other authorized leave other than vacation or holiday, they shall notify their supervisor or the supervisor's designated representative thirty minutes prior to the start of the employee's next scheduled shift and state the reason for the absence. Employees who are hospitalized or physically incapacitated shall provide their supervisors periodic reports as to recovery and prospects for return to work.

The following notice to be reposted and enforced:

NOTICE TO ALL EMPLOYEES

*****

IN ACCORDANCE WITH THE WORK RULES EFFECTIVE 1/1/79 -- WORK RULE A-6 -- "NOTIFICATION OF ILLNESS TO SUPERVISOR."

ALL EMPLOYEES ARE HEREBY NOTIFIED THAT EFFECTIVE IMMEDIATELY, INDIVIDUAL EMPLOYEES MUST PERSONALLY CALL IN FOR SICK LEAVE BETWEEN 7:00 A.M. AND 7:30 A.M. ON THE DAY SICK LEAVE IS TO BE USED. SUCH REQUESTS WILL ONLY BE ACCEPTED BY AN AUTHORIZED SUPERVISOR.

SICK LEAVE REQUESTS WILL NOT BE GRANTED UNLESS THE PROPER CALL-IN NUMBER RECEIVED FROM THE SUPERVISOR IS PRESENTED BY THE EMPLOYEE UPON HIS RETURN TO WORK AND ENTERED BY THE EMPLOYEE ON THE TIME CARD.

THIS IS THE ONLY METHOD IN WHICH SICK LEAVE AND SICK LEAVE PAY WILL BE APPROVED.

ARTICLE XVIII. Health Insurance

Section 2.

A. For 1979 the Municipality shall pay toward the monthly family coverage $115.00 and $46.00 for the single coverage.

B. Unit employees will not be liable for any increases in these premium amounts during 1979 or 1980.