STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of

MILWAUKEE BUILDING & CONSTRUCTION TRADES COUNCIL, AFL-CIO

To Initiate Arbitration Between Said Petitioner and

MILWAUKEE METROPOLITAN SEWERAGE DISTRICT

Case 231
No. 38843 ARB-4431
Decision No. 24813-A

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S. C., Attorneys at Law, by Ms. Marianne Goldstein Robbins, appearing on behalf of the Union.

Mr. William K. Strycker, Labor Relations Manager, Milwaukee Metropolitan Sewerage District, appearing on behalf of the Employer.

ARBITRATION AWARD:

On September 28, 1987, the undersigned was appointed to serve as Arbitrator by the Wisconsin Employment Relations Commission, pursuant to Section 111.70 (4)(cm) 6. and 7. of the Municipal Employment Relations Act to resolve an impasse existing between Milwaukee Building & Construction Trades Council, AFL-CIO, referred to herein as the Union, and Milwaukee Metropolitan Sewerage District, referred to herein as the District or the Employer. Hearing was held at Milwaukee, Wisconsin, on February 8, 1988, at which time the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. At hearing, the parties waived those provisions of 111.70 (4) (cm) 6. c., which speak to right of either party within a time limit established by the Arbitrator to withdraw its final offer and mutually agreed upon modifications thereof. The proceedings were transcribed, and briefs were filed in the matter. Briefs were exchanged by the Arbitrator on April 12, 1988.

THE ISSUES:

There are two issues in dispute between the parties. The issues involve wages and a modification of the duty disability provision of the predecessor Collective Bargaining Agreement. The positions of the parties are reflected in their final offers.

EMPLOYER FINAL OFFER:

I. WAGES

1985-86	Rates adjusted by 1/2%; no salary increase in 1985-1986.
1986-87	3.0% across the board, effective August 1, 1986.
1987-88	3.0% across the board, effective August 1, 1987.
1988-89	3.0% across the board, effective August 1, 1988

II. Revise Schedule A, Section D, 1 of the predecessor Agreement at page 15 to read as follows:

1. A regular full-time employee who sustains an injury while performing within the scope of his/her employment, as provided by Chapter 102 of

the Wisconsin Statutes (Worker's Compensation Act) shall continue to receive an amount equal to his/her regular straight time take home pay at the time of injury, described herein as "injury pay" in lieu of Worker's Compensation for the period of time he/she may be temporarily totally or temporarily partially disabled because of said injury, not to exceed thirty (30) working days per injury, provided they are used within one (1) calendar year from the date of the injury. Up to 30 work days are available for each new qualifying injury and will not be deducted from the supplemental bank of hours described below.

2. Thereafter, effective January 1, 1987, a total of 2,000 hours for an employee's employment career may be used to supplement Worker's Compensation payments, up to an employee's regular straight time take home pay. The difference between an employee's gross payment and Worker's Compensation amount (before deferred compensation deductions) will be divided by the employee's gross hourly rate to determine the hours deducted from the remaining total.

3. Remain as is.

UNION FINAL OFFER:

I. WAGES

1986-87	3.5% across the board, effective August 1, 1986
1987-88	3.5% across the board, effective August 1, 1987
1988-89	3.5% across the board, effective August 1, 1988

II. DISABILITY PROVISION - Schedule A, Section D, 1 - retain the terms of the predecessor Contract which read as follows:

D. DUTY INCURRED DISABILITY PAY

1. A regular full-time employee who sustains an injury while performing within the scope of his/her employment, as provided by Chapter 102 of the Wisconsin Statutes (Workers' Compensation Act) shall receive eighty percent (80%) of his/her hourly rate (eight (8) hours per day), described herein as "injury pay" in lieu of workers' compensation for the period of time he/she may be temporarily totally or temporarily partially disabled because of said injury.

2. In no case shall an employee receive "injury pay" for more than one (1) year (250 working days) for each compensable injury.

3. Employees temporarily partially disabled may be assigned work within limits prescribed by a physician appointed by the District during the period of such temporary partial disability. An employee performing work under this section shall receive his or her full, regular rate of pay.

THE CRITERIA:

The parties have submitted evidence relating to the criteria found at 111.70 (4) (cm) 7, which directs the Arbitrator to consider and give weight to when making his decision. Those factors are:

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.

e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.

f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost-of-living.

h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

POSITION OF THE PARTIES:

POSITION OF THE UNION:

The Union argues that under the statutory criteria set forth in Section 111.70 (4) (cm) 7, the Union's final offer on wage rate is the more reasonable, in that:

1. The comparisons of settlements with other units internal to the employees of this Employer support the Union offer.

2. The comparison of wage rates which historically established a certain ranking among building trades employees compared to other employees in the employ of the Employer support the Union offer.

3. Increases granted to management personnel of the Employer greatly exceed the percentage increase contained within the Union final offer here, and, therefore, are supportive of the Union final offer.

4. Wage rates paid to building trades employees by other public employers in the community support the Union final offer.

5. Wage comparisons with rates paid to building trades employees in the private sector support the Union final offer.

6. While not a controlling criteria, in the viewpoint of the Union, the cost of living criteria favors its offer, because employees in this unit have not received an increase in pay since 1984, and the cost of living has risen 10.2% since that time.

With respect to the disability pay provision proposed by the Employer, the Union argues that:

1. The Employer has failed to meet its burden showing that they are justified in altering the terms of the predecessor agreement with respect to disability pay.

2. The Union proposal maintains the status quo and reflects the structure more comparable to the provisions contained in two other bargaining units with which the Employer bargains and is the same benefit enjoyed by Milwaukee County employees.

3. The fact that there had been a tentative agreement of this provision between the bargaining committees which was rejected by the Union is not a specific factor listed in 111.70 (4) (cm) 7, and as such should not be considered by the Arbitrator; or alternatively, if it is worthy of some consideration, the fact that there was a tentative agreement on this issue cannot overcome the conclusion which the comparables and established provisions of the prior agreements between the parties so clearly mandate. Further, the Union argues with respect to the prior tentative agreement in committee, that if Union negotiators cannot take back a proposal prior to the resolution of other contracts without jeopardizing the Union position, should interest arbitration later be necessary, there will be no possibility of early negotiated resolution to contracts.

POSITION OF THE EMPLOYER:

The Employer makes the following argument:

1. The Employer offer represents the agreement reached by the parties in committee.

2. The Employer offer meets the cost of living criteria.

3. The Employer offer exceeds compensation increases received by construction industry employees.

4. The cost per hour work generated by the District offer greatly exceeds the cost per hour paid by private construction employers.

5. The Employer offer exceeds increases received by other comparable public employees.

6. The Employer offer exceeds total compensation increases received by other unions who negotiate with this Employer.

7. The Union has not provided persuasive justification for demanding wage increases that would further increase their favorable position over the groups mentioned.

8. The duty disability changes proposed by the District are fair and reasonable and provide improved protection for serious injuries. The proposal provides superior protection than private employers and most, if not all, public employers.

9. The Union has not provided any evidence that the duty disability proposal of the Employer will harm any employees.

10. All other District unions have accepted major modifications in the duty disability area with Local 317 Operating Engineers agreeing to the exact language the Employer offers here.

DISCUSSION:

THE WAGE DISPUTE

The predecessor Collective Bargaining Agreement (Union Exhibit No. 2) was negotiated to cover a term commencing August 1, 1982 and expiring July 31, 1985, a three year Contract. Subsequent to the expiration date of the aforementioned Collective Bargaining Agreement, on February 19, 1986, the parties executed an extension of that Agreement, which read (Union Exhibit No. 3):

> The parties agree to continue the current contract, excluding the work jurisdictional issue, which will be resolved through the interest arbitration process.
>
> Contract duration to continue until July 31, 1986.

As a result of the foregoing Contract extension, the Agreement was extended through 1985-86, without any wage increase. The parties have now impassed in their negotia-

tions for a three year Agreement to succeed the predecessor Agreement which was continued until July 31, 1986. There is a distinction in the form of the first year wage proposal of the Employer and the Union, however, it is a distinction without substance. The Union proposes a 3.5% increase for the first year of the Agreement, August 1, 1986 through July 31, 1987, and the Employer proposes an increase of 3% for that same year; however, prior to the implementation of that increase, the Employer would escalate the wage rates for the prior year by 1/2%, which in effect creates the same wage schedule for 1986-87 as that proposed by the Union. Consequently, no attention need be given to the year 1986-87. With respect to the remaining two years of the three year Agreement, there is a 1/2% difference in the wage offers of the parties for each of the years, the Union proposing 3.5% for each of the second and third years, compared to 3% increase proposed by the Employer. The question, then, before the undersigned is whether the 3% or the 3.5% increase in the second and third years of the Agreement more nearly conforms to the requirements set forth in the criteria of the statute at 111.70 (4) (cm) 7.

Both parties argue that the internal patterns of settlement support their position. A scrutiny of the evidence establishes that the Employer has bargained with three other bargaining units for the years encompassed in this dispute. The record evidence establishes that the Employer has settled with the Operating Engineers for increases of 3.9% in 1986-87; 3% in 1987-88 and 3.25% in 1988-89, for a total of 10.15% over those three years. The record evidence establishes that the Employer has settled with the Machinists Union for 3.9%, 3.25% and 3% for that three year period, for a total of 10.15% for the three years. The record further establishes that the Employer entered into a settlement with the AFSCME Union for 3.9%, 3.25% and 3% for the three years, totaling 10.15% for the term of that Agreement. Here, the Employer offers 3.5%, 3% and 3% for a total of 9.5% for the same three year term as described in the preceding findings, and the Union offers 3.5% in each of the three years, for a total of 10.5% increase for the same three year period for which the other unions settled. It follows from the foregoing comparison that the internal patterns of settlement, when considering wage increase settlements only, favor the adoption of the Union offer.

The Employer contends that total compensation or package settlement costs create a different story. The Employer relies on its Exhibit No. 88 in support of that argument. The undersigned has reviewed the data contained within Employer Exhibit No. 88 and finds that for the three year term being arbitrated here, AFSCME Local 366 settlements represented a 7.1% package cost increase; the Machinists Lodge 66 represented a 6.33% package cost increase; and the Operating Engineers Local 317 represented a 7.82% package cost increase. The Employer offer for the three years at issue here represents an 8.3% package cost increase, and the Union offer represents a 9.2% package cost increase for the three years. From the foregoing, it is clear that the patterns of settlement, when considering total package costs, clearly favor the Employer offer, because the 8.3% increase of total package cost for the three year Contract is almost 1/2 percent higher than the next highest settlement for that same three year period, the Operating Engineers at 7.82%, and is 2% higher than the Machinist settlement for those same three years. The Union offer represents a percentage increase of almost 1% higher than that of the Employer for this same three year period. It follows from all of the foregoing that when considering total package costs for the three years at issue here the Employer offer is favored.

A comparison of the wage settlements for the three years in question among other public employers in the Milwaukee area, who employ building trades personnel, is found at Employer Exhibit No. 93. The exhibit reveals that the wage settlements for the three years at issue here total 9.8% among the outside trades; 8.7% for trades personnel employed by the Milwaukee Public School System; 9.72% for trades employees employed by the City of Milwaukee; and 8.28% for trades personnel employed by the County of Milwaukee. The foregoing compares to the 9.5% increase offered by the Employer, and the 10.5% increase offered by the Union. Clearly, the settlement patterns among the outside trades in the private sector, and those of the other major public employers in the Milwaukee Area, favor the adoption of the Employer offer, because the Employer offer is closer to the total of those three year wage settlements than is that of the Union.

The undersigned is unable to make a comparison of package costs, because the data contained in Employer Exhibit No. 93 is not available for all three years of the settlements of the comparable employers employing trades personnel, either in the private or public sector. Consequently, no comparison is made for total package cost, and obviously, no conclusions are drawn with respect thereto.

The undersigned has made the foregoing comparisons, using the three years that are at issue in the term of this Agreement. At page 5 of its brief, the Union makes a comparison for the three years being negotiated here, plus the increases negotiated for the year 1985-86 in which the parties negotiated a wage freeze for the extension of the predecessor Contract for the one year. The undersigned believes that to be an inappropriate comparison, because it was the parties who voluntarily agreed to the wage freeze for 1985-86. While the record does reflect that the other units with which the Employer negotiates negotiated increases for 1985-86, the parties must have had a valid reason for a wage freeze for the continuation of the Contract for a one year period of time. If the parties were satisfied that it was appropriate to continue the Contract for an additional year without any wage increase, the undersigned believes it would be inappropriate for them now to argue that the bargain was poorly made and that 1985-86 should be considered. Consequently, the comparisons which this Arbitrator draws are limited to a comparison of the three years at issue in these proceedings and does not consider the extended year of the predecessor Contract to which the parties had agreed.

The Union has argued that a comparison of wage increases to management personnel militates for an adoption of its offer. Union Exhibit No. 24 sets forth the bi-weekly salaries of certain management personnel in August, 1984, and August, 1987. Percentage increases are then calculated between those two dates. The undersigned finds the foregoing data to be inapposite for several reasons. The most significant reason is the fact that the Union, in its data, includes the years preceding the term of the Agreement now being arbitrated. For the same reasons discussed in the preceding paragraph, the undersigned believes that the years prior to the term of this Agreement are not proper for comparison purposes. Secondly, the record is clear that the increases which have been granted to management employees have been made pursuant to a pay system installed by a professional consulting firm, and that at least a portion of the increase is a result of a merit pay system. Because the management increases are based in a significant part on performance, and the wages paid to the employees in this unit are a one rate wage rate, the undersigned believes the comparison of increases between management personnel and the personnel contained in this unit compares apples and oranges. For that reason, the undersigned places no weight on this data.

We turn now to a comparison of wage rates which would be generated by the offers of the parties here compared to the wage rates being paid among comparable employers, both in the private sector and in the public sector. Considering first the private sector, Union Exhibit Nos. 15 and 18 provide a comparison of wage rates which will be effective for the electrical group for 1987-88. The Employer offer for the electricians is $16.93 an hour and the Union offer is $17.02 per hour. This compares with the following wages paid by public sector employers in the Milwaukee area: $16.90 in the City of Milwaukee; $16.90 in the County of Milwaukee; $19.31 for State of Wisconsin. The rates effective 1987 for Milwaukee Public School trade employees are not set forth on Union Exhibit No. 18. Because the foregoing data shows that the Employer offer compares favorably to the electrician wages paid in the City and County of Milwaukee; and because the record evidence establishes that ten of the unit employees are classified as electricians, the largest group employed within this unit; the undersigned is satisfied that in making the comparison of wage rates for electricians employed by other public employers in the Milwaukee community, the Employer offer is preferred.

We consider now a comparison of wage rates to the private sector, and find that the private sector wage rates for electricians varies from $16.37 to $18.48 per hour (Union Exhibit No. 18). Thus, the offers of both parties here fall within the range of wage rates paid in 1987 for private sector electricians. The Union offer would be slightly preferred, because it is closer to the average of those rates than is that of the Employer.

Finally, we consider the comparison of wage rates to the outside rates which.

were effective for 1987-88. Union Exhibit No. 17 establishes that effective August 1, 1987, the Employer offer would generate 90.2% of the bricklayer outside rate; 90% of the carpenter outside rate; 92.2% of the electrical-mechanical rate; 92.1% of the electrical-foreman rate; 98.3% of the industrial locomotive operator rate; 96% of the outside painters rate; 96% of the outside painter foreman rate; 93.6% of the sheetmetal worker foreman rate; 92.5% of the steamfitter rate; 90.3% of the steamfitter foreman rate. The Union offer in comparison to outside rates effective August 1, 1987, would generate 90.7% of the outside bricklayer rate; 90.3% of the outside carpenter rate; 92.7% of the outside electrical-mechanical rate; 92.5% of the outside electrical foreman rate; 101.7% of the industrial locomotive operator rate; 98.3% of the outside painter rate; 99.3% of the outside painter foreman rate; 94% of the sheetmetal worker foreman rate; 92.9% of the outside steamfitter rate; and 90.8% of the outside steamfitter foreman rate. The record evidence establishes that prior to the time the parties commenced negotiating increases not tied to the outside rate for employees within this bargaining unit, the parties had agreed that the relationship to outside rates should be 92% of the outside rate. From the foregoing, the undersigned concludes that the parties have recognized, because of all of the conditions which vary between employment by this Employer compared to employers in the outside trades, that a lower wage rate is warranted here than outside. It is clear to the undersigned that the parties, in their bargaining process, when they last tied the rates in this unit to outside rates, determined through that process that a 92% of the outside rate relationship was appropriate. There is nothing in this record to convince the undersigned that the relationship of rates paid in this unit to the outside rates should be different from the relationship that was heretofore established, notwithstanding the Union argument to the contrary. Therefore, because the Employer offer, except for one bricklayer and one carpenter, exceeds the 92% ratio which the parties earlier had recognized as appropriate; the Employer offer is preferred, based on these comparisons.

The undersigned has reviewed all of the parties' arguments with respect to the cost of living criteria, as well as the evidence in the record with respect to that criteria. After careful reflection, the undersigned is satisfied that the cost of living criteria favors the adoption of the Union offer.

The undersigned now considers all of the foregoing findings and discussions thereon in order to determine which party's wage offer is preferred, based on the evidence and statutory criteria. After serious consideration, for the reasons stated in the preceding discussion, which reflect that more of the comparisons favor the adoption of the Employer offer than that of the Union, the undersigned concludes that the Employer offer on wages is preferred.

DUTY DISABILITY DISPUTE

The Employer here has proposed a modification of the status quo as it goes to duty disability. The Union argues that the Employer has not sustained its burden of proof substantiating a change is necessary. The Union correctly argues that the Employer needs to establish by a substantial margin the necessity for the change it proposes. Here, the Employer proposes that the language of the predecessor Agreement, which provided for 250 days of workers' compensation subsidy for each injury, be modified to provide for 30 days of such subsidy for each injury, and a one time 2000 hour bank, which when exhausted would terminate the subsidy.

The parties have offered substantial evidence and made substantial argument with respect to the hazardous conditions of employment which exist and are inherent to employment in the Sewerage District. Both parties acknowledge that the Employer and the Union cooperate to effect the best possible working conditions as far as safety is concerned. All the data is impressive, and while the data indicates, based on worker compensation rating bureau's ratings for workers comp insurance a favorable experience rating for these employees, none of that data with respect to the hazards of the occupation are persuasive in establishing the need for the change advocated by the Employer.

The undersigned has also reviewed the bargaining history with other units in the employ of the Employer with respect to this issue. The evidence establishes

that the Operating Engineers have voluntarily agreed to the proposal which the Employer makes to this unit. The evidence establishes that the Machinists and the AFSCME units have agreed to a modification of the language, but the Agreement in those two units is one which is substantially different than the proposal of the Employer to this Union. In the AFSCME unit and in the Machinists unit, the provisions of the predecessor Agreement have been modified so that where the subsidy for workers' compensation in the predecessor Agreement was 250 days per injury, the settlement now reflects that that subsidy will be for 210 days per compensable injury.

From all of the foregoing, the undersigned concludes that the Employer has failed to establish its burden of proof that the change it proposes is necessary or essential to the Employer's operation. While one of the other units with which the Employer bargains has agreed to identical terms, the remaining two units have agreed to terms which are not far different than the terms of the predecessor Agreement. From all of the foregoing, then, the undersigned concludes that the Union offer on status quo is preferred.

THE IMPACT OF THE PRIOR TENTATIVE AGREEMENT(S)

The Employer argues that there have been three tentative agreements entered into on the part of the Employer reflecting acceptance by the Union negotiating committee of offers which were essentially the same as, or more favorable, to the Employer than that of the Employer final offer here. The Employer argues that because the Union negotiators in this matter considered the tentative agreements entered into to be fair and equitable, it should be persuasive proof that the Employer offer here is fair and reasonable and should be adopted. The Employer relies on prior arbitration cases in support of its position, including Twin City Rapid Transit Company, 7 LA 845 (1947); North American Aviation, 19 LA 76, 77 (1952); Durso and Geelan Company, 17 LA 784; Green County Pleasant View Nursing Home (Dec. No. 17775-A); Green County Department of Social Services and Highway Department (Dec. Nos. 17937-B and 17932-B); City of Wauwatosa Fire Department (Dec. No. 19760-A) and Kenosha Unified School District, (4/80).

The Union argues that the fact there was a temporary agreement between the Employer and the Union has no status among the factors listed in 111.70 (4)(cm) 7, and, therefore, should not be considered by the Arbitrator. Alternatively, if arguendo the matter is worthy of consideration, the Union argues these tentative agreements cannot overcome the conclusions which the comparables and established provisions of prior agreements between the parties so clearly mandate.[1]

With respect to the Union argument that there is nothing in 111.70 (4)(cm) 7 which authorizes the Arbitrator to consider tentative agreements, the undersigned rejects that Union argument, because there is criteria j which directs the Arbitrator to consider other factors not confined to the foregoing listed factors which are normally or traditionally taken into consideration in determining wages, hours and conditions of employment. The citations furnished by the Employer certainly indicate that the arbitrators in the cases cited have considered those tentative agreements. Typical of arbitrators' consideration of prior offers or agreements are the words of Walter G. Seinscheimer, who in Cummins Sales, Inc., 54 LA 1069 at page 1072 opined as follows:

> Frankly, there is little question in my mind that employees should be given the 20¢ per hour offered by the Company as of January 1, 1971. Since it was offered by the Company, I find the Company's statement that the present wage rates are reasonable until proven otherwise, is

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1/ The parties disagree as to the number of tentative agreements reached between the committees. The Employer argues there were three and the Union argues there was one. The Arbitrator will not resolve that fact dispute since the Union acknowledges one tentative agreement was reached in committee and rejected by the membership. The impact of that tentative agreement is what is considered here.

> not very persuasive. The Company, no matter how reluctantly, did offer the 20¢ as of January 1, 1971, therefore, at least in this sense, the Company has agreed that its employees should be raised by that amount. It cannot, now, at this late date, say that it believes the present wage rates are reasonable . . .

Thus, it is clear that Arbitrator Seinscheimer, as well as the arbitrators cited by the Company, have considered offers of settlement and tentative agreements when perfecting an interest arbitration award.

There are opinions to the contrary. For example, Arbitrator John F. Sembower in Head of the Lakes Electric Cooperative Assn., 65 LA 839 at page 842, opined as follows:

> The Cooperative also objects strenuously to anything being imported into this record concerning what it regards as the fourth "unofficial" negotiation session, on grounds that this involves "settlement discussions". It is true that arbitrators and courts generally follow the rule of not receiving evidence concerning efforts of settlements between the litigants, for to do so, might discourage all such efforts in the future. It is highly important that disputants feel free to discuss compromise and settlement in the hope that they may be able to reach understandings between themselves, and this arbitrator fully subscribes to that proposition. Accordingly, he has not considered any matters relative to efforts at settlement of their disputes by these parties.

Because it is clear that arbitrators have considered settlement offers and tentative agreements in the past, this Arbitrator will consider the evidence with respect to the tentative agreement. The impact of the tentative agreement, however, must be viewed cautiously, because as Arbitrator Sembower opines in Head of the Lakes Electric Cooperative Assn., to conclude that evidence concerning efforts at settlement between litigants might discourage efforts to settle in the future, if they realize that such discussions and/or tentative settlements might be used adversely in later litigation. Thus, the undersigned is persuaded that his earlier holdings in Kenosha Schools and in City of Oshkosh (Public Library), Dec. No. 24800-A (Feb. 23, 1988) are valid. In City of Oshkosh, the undersigned concluded:

> First of all, there was the tentative agreement in committee for the proposal which the Union now espouses in its final offer. The fact that the two committees entered into a tentative agreement displays a certain degree of reasonableness to the proposal, or the Employer committee undoubtedly never would have agreed to it on a tentative basis in the first place. The tentative agreement was rejected by the Employer Board on a tie vote of 3 to 3. Nevertheless, at least at the committee level, the negotiators found the proposal which is at issue here to be reasonable. Because the undersigned concludes that the committee has found the proposal to be reasonable, it would seem to follow that the Arbitrator should find that the proposal is reasonable as well.
>
> In finding that the committee's tentative agreement establishes a certain reasonableness to the Union proposal here, the Arbitrator in no way infers that the Union should win its final offer in this arbitration proceeding merely because the tentative agreement was not ratified by the Employer Board. The undersigned has considered this type of situation in the past, and has rejected any argument on the part of parties who would enforce a tentative agreement which has been rejected by the ratifying group of one of the parties. The undersigned remains convinced that to adopt a final offer solely because there has been a tentative agreement would have a chilling effect on bargaining, and should be avoided in the interest of encouraging collective bargaining between the parties.

From all of the foregoing, then, the undersigned concludes that there is a reasonableness to the total Employer offer by reason of the tentative agreement. However, the offer should not be adopted merely because there has been a tentative agreement entered into in committee.

SUMMARY AND CONCLUSIONS:

The undersigned has concluded that the Employer offer on wages is preferred, and that the Employer has failed to fulfill its burden of proof with respect to the changes it proposes in the duty disability provisions of the Agreement. It remains, then, to be determined which offer should be adopted in its entirety.

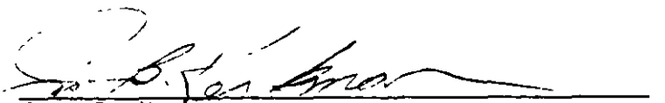
After careful consideration, the undersigned concludes that the Employer offer in its entirety should be adopted. This is so because there have been modifications to the duty disability provision entered into by all of the other units with which the Employer bargains. The undersigned particularly notes that the Operating Engineers have accepted the exact provision which the Employer proposes here. Also, the fact that the negotiating committee of the Union on at least one occasion entered into agreement on this provision, some reasonableness is established to the Employer proposal on duty disability.

Therefore, based on the record in its entirety, and the discussion set forth above, after considering all of the arguments of the parties, and all of the statutory criteria, the undersigned makes the following:

AWARD

The final offer of the Employer, along with those terms of the predecessor Agreement which remained unchanged throughout the course of bargaining, are to be incorporated into the parties' written Collective Bargaining Agreement.

Dated at Fond du Lac, Wisconsin, this 20th day of May, 1988.



Jos. B. Kerkman,
Arbitrator