
 *
 In the Matter of the Arbitration Between *
 *
 Local 2477, International Association of *
 Fire Fighters, AFL-CIO & CLC *
 *
 -and- *
 *
 Town of Allouez (Fire Department) *
 *

Case VIII
 No. 20502 MIA-246
 Decision No. 15022-B

On November 22, 1976 the Wisconsin Employment Relations Commission appointed the undersigned as arbitrator to make a final and binding determination of a dispute between the above-captioned parties. No hearing was held. The parties agreed instead with the arbitrator's suggestion that the matter be determined based on the submission of briefs (and reply briefs if so desired). The parties agreed to submit briefs by January 21, 1977 with the reply briefs, if any, submitted within 10 days following receipt by each of the other's brief. On January 12, 1977 the Town of Allouez filed a motion with the Commission asking that the Union's petition for arbitration be dismissed. On January 17, 1977 the Commission denied the Town's motion (see WERC Decision No. 15022-B). The Union filed its brief in accordance with the agreed upon briefing schedule. The Town's brief was not received by the arbitrator. The arbitrator wrote to the parties on March 7, 1977 and indicated that he would draft his decision in this matter and would consider the Town's brief if it were received. As of March 28, 1977, when the award was given to the typist, no brief from the Town had been received. The correspondence with the parties is appended to this Award.

In accordance with Section 111.77(4)(b) of the Municipal Employment Relations Act, the arbitrator is empowered to choose one of the two final offers of the parties and his decision is final and binding on the parties. The final offers submitted by the parties are as follows:

Union Final Offer:

"Fair Share

The parties agree that the 'Fair Share' provisions as defined in Wisconsin Statute 111.70(1)(h) are part of this contract. The employer shall deduct the amount of dues as certified by the Union from the earnings of the employees in the Bargaining Unit. Such amount to be remitted to the Union Secretary-Treasurer."

Town Final Offer:

"Town of Allouez's final offer on 1976 and 1977 collective bargaining agreement is non agreement on Union's final offer requiring a Fair Share Agreement."

Facts

The Town of Allouez has a fire department consisting of 14 full-time personnel, of which 10, all with the rank of firefighter are within the bargaining unit. Negotiations for an initial contract began in March, 1976 and agreement was reached on all but one item, fair share, after 8 negotiations sessions and an additional 7 sessions with a mediator.

Positions of the Parties:

Union:

1) The Union contends that a fair share agreement is justified because the Union has a legal obligation to service and fairly represent all members of the bargaining unit, whether or not they are members of the Union. This representation obligation

extends to negotiations and processing of grievances. The Union cites its obligations under section 111.70, Wis. Stats., and cites also the Recognition clause agreed to by the parties as part of the initial contract:

The Town recognizes the Union as the bargaining agent and representative for purposes of collective bargaining with respect to wages, hours, and working conditions for all full time Fire Department employees, excepting the Fire Chief and Captains.

The Union cites also the disposition of an identical issue by arbitrator Jacobs in a case involving the City of Rice Lake (MIA 115, March 3, 1975) wherein the arbitrator said:

There is no validity to the Employer's argument that Fair Sharing forces the non union employee to join the Union. In fact, Fair Sharing is a method whereby an employee pays his share of the cost of the representation and efforts expended in his behalf by the Union. As the exclusive representative, the IAFF has to bargain for non members as well as members. So long as the Union is the exclusive representative, this duty to represent exists. There may be other remedies at law available in the event that a majority of the bargaining group doesn't want a union to represent them. Employee(s) who are not members but still receive the benefits of the Union efforts should pay their fair share of the cost of the efforts.

2) The Union contends it has in fact supplied benefits to all unit members, union members and non-union members alike. As evidence of this the Union compares the benefits negotiated by it with the benefits which were in effect prior to the certification of the Union as bargaining representative.

3) As further justification for its position the Union contends that fair share agreements are a prevailing practice in firefighter contracts in Wisconsin, and particularly in the geographical area which includes Allouez. Both Green Bay and DePere, the cities adjacent to Allouez have fair share clauses in their firefighter contracts. Other cities in the immediate area having such an agreement are Kaukauna, Neenah and Appleton.

Town: The position of the Town in this matter is not known since despite an agreement to submit arguments by January 21, 1977, the Town did not submit a brief.

Discussion:

The arbitrator has considered the factors specified in section 111.77(6), Wis. Stats. The following observations relate to those factors which are relevant to the final offers in this case. The Town has the legal authority to grant the Union's final offer, pursuant to 111.70, Wis. Stats. There is no obvious adverse effect on the interests and welfare of the public in meeting the Union's final offer, nor is there any impact on the Town's financial ability to meet costs. The Union's brief contains sufficient evidence that fair share agreements are common in public employment in comparable communities, and specifically other fire departments in the immediate geographical area. Union security agreements in the private sector are a common occurrence.

In addition, the facts and arguments contained in the Union's brief offer sound support for the Union's final offer. The arbitrator does not regard it as his responsibility to make arguments in favor of the Town's position, where the Town itself has not chosen to do so, and thus the arbitrator has no basis on which to support the Town's final offer.

Based on the foregoing facts and discussion the arbitrator hereby decides in favor of the Union's final offer and the Town is hereby ordered to implement it.

Dated at Madison, Wisconsin this 29th day of March, 1977.

Edward B. Krinsky /s/
Edward B. Krinsky, Arbitrator

EDWARD B. KRINSKY, ARBITRATOR
110 ALDEN DRIVE
MADISON, WISCONSIN 53705

December 21, 1976

Mr. Donald J. Hanaway
Condon & Hanaway
312 Cherry Street
P O Box 908
Green Bay, Wisconsin 54305

Mr Edward Durkin, Vice-President
International Association of Fire Fighters
5606 Old Middleton Road
Madison, Wisconsin 53705

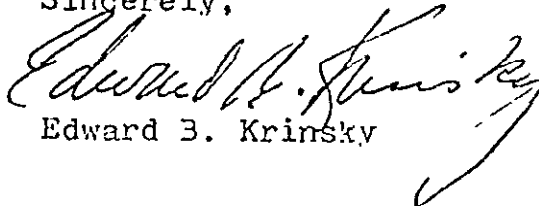
Re: Town of Allouez (Fire Department)
Case VIII No. 20502 MIA-246

Gentlemen:

This letter is to confirm the arrangements for proceeding in the above-entitled matter as made final in separate telephone conversations with you yesterday. You have agreed with my suggestion that there be no hearing and that briefs be submitted to me by Friday, January 21, 1977. Please send an original and one copy to me, and I will exchange them. It is further agreed that each party may submit a reply brief within ten days following receipt of the initial briefs. At the time I exchange the initial briefs I will set a date for the submission of the reply briefs.

Thank you for your cooperation in expediting these arrangements.

Sincerely,


Edward B. Krinsky

EBK:mf
cc: Mr. Terry Olstadt
Mr. Clarence Matuszek
Local 2477

LAW OFFICES
CONDON & HANAWAY, LTD.
312 CHERRY STREET • P.O. BOX 908
GREEN BAY, WISCONSIN 54305

DAVID J. CONDON
DONALD J. HANAWAY
GARY A. WICKERT
PATRICK C. HITT

TELEPHONE
(414) 432-9201

July 31, 1977

Mr. Edward B. Krinsky
110 Alden Drive
Madison, Wisconsin 53705

Re: Town of Allouez (Fire Department)
Case VIII No. 20502 MIA-246

Dear Mr. Krinsky:

I am writing to apologize to you and Ed Durkin for my delay in preparing and forwarding my brief to you in the above matter. Commencing on January 12, 1977 I was tied up for ten straight days in the preparation and trial of a Circuit Court condemnation case; and consequently was unable to meet the agreed upon deadlines. I received the Commission's decision on my Motion regarding jurisdiction on January 19, 1977.

It would be my intention to forward our brief to you either later this week or early next week. I, of course, am forwarding a copy of this letter directly to Ed.

If you have any questions or comments in this regard do not hesitate to contact me. I again apologize for the delay and indicate that it has not been in any way caused by the municipal employer but because of my own trial calendar.

Very truly yours,

CONDON & HANAWAY, LTD.


Donald J. Hanaway

DJH:clm
cc: Mr. Edward Durkin

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

~~1750 NEW YORK AVENUE - N.W. - WASHINGTON - D.C. - 20008~~
~~TELEPHONE NO. (202) 372-8484~~

EDWARD DURKIN — 5TH DISTRICT VICE PRESIDENT
5606 OLD MIDDLETON ROAD — MADISON, WISCONSIN 53705



William H. McClellan
President

Frank A. Palumbo
Secretary-Treasurer

March 1, 1977

Mr. Edward Krinsky
Impartial Arbitrator
110 Alden Drive
Madison, WI 53711

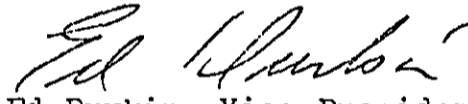
Re: Allouez Final Offer Arbitration

Dear Mr. Krinsky:

Local 2477 has been extremely patient in awaiting the Town of Allouez's conforming with the Arbitration procedure agreed to. The Town asked for a delay based on a heavy work load, yet they had found time to file a very lengthy Brief with the W.E.R.C. before January 21.

Their 10 day extension is now two weeks overdue. We must ask you to write the award based upon the evidence before you at this time.

Sincerely,


Ed Durkin, Vice President
5th District

cc - Attorney Don Hanaway
Gary Doeren

Affiliated with

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS • CANADIAN LABOUR CONGRESS • NATIONAL FIRE PROTECTION ASSOCIATION

11111111 111

March 7, 1977

Mr. Donald J. Hanaway
Condon & Hanaway
312 Cherry Street
P.O. Box 908
Green Bay, Wisconsin 53705

Mr. Edward Durkin
Vice-President, International
Association of Fire Fighters
5606 Old Middleton Road
Madison, Wisconsin 53705

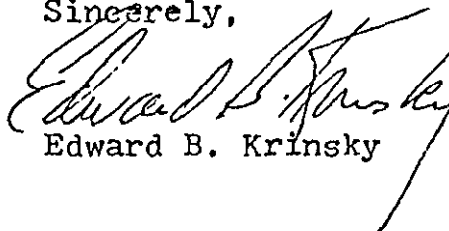
Re: Town of Allouez (Fire Department)
Case VIII No. 20502 MIA-246

Gentlemen:

This is to acknowledge Mr. Durkin's letter of March 1st. He correctly points out that the dates for the original briefing and the extension have since past and the Employer's brief has not yet been submitted.

I will begin to work on the decision in this case after the one on which I am currently working. I would expect therefore to have a draft done by the end of March at the latest. If I receive the Employer's brief before that time I will of course consider it in making the decision; otherwise, I will issue the award using the stipulated issue and the Union's brief as the record.

Sincerely,


Edward B. Krinsky

EBK:mf