

In the Matter of Municipal
Interest Arbitration

Between

Firefighters Local 1777,
International Association of
Firefighters

and

Village of Greendale, Wisconsin

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WERC Case XXV
No. 21225
MIA-293
Decision No. 15363-A

Appearances: For Firefighters Local 1777: Mr. Edward Durkin, Vice President,
International Association of Firefighters, 5606 Old Middleton
Road, Madison, Wisconsin 53705

For the Village of Greendale, Mr. Roger E. Walsh, Esq. Brigden,
Petajan, Lindner and Honzik, S.C., 700 North Water St.,
Milwaukee, WI 53202

Background: This is a matter of final offer arbitration between Fire Fighters Local 1777, Greendale, Wisconsin and the Village of Greendale, Wisconsin. On January 8, 1977 the Union, as petitioner filed a petition with the Wisconsin Employment Relations Commission pursuant to Section 111.77(3) of the municipal Employment Relations Act requesting the commission order final arbitration on the ground that an impasse existed between the parties. An informal investigation was conducted on February 16 and March 10, 1977 by Robert M. McCormick of the Commission staff. Mr. McCormick recommended to the Commission that it order final arbitration. On March 24, 1977, the Commission concluded that an impasse within the meaning of the statute existed and ordered the parties to proceed to final and binding arbitration. The parties having selected Harry Graham of Madison, Wisconsin from a list of arbitrators furnished by the Commission, the Commission issued its "Order Appointing Arbitrator" on March 31, 1977.

On May 6, 1977 a hearing was held in Greendale at which time the parties were given complete opportunity to present testimony and exhibits. Briefs were filed in this dispute and were exchanged by the Arbitrator on June 2, 1977 at which time the record in this case was closed.

The Final Offers:

The Final Offer of the Village is:

1. Wages-- Effective 1/1/77--103% of 1976 rates
Effective 5/1/77--104% of 1976 rates
Effective 10/1/77--107% of 1976 rates
2. Institution of a Longevity Pay Plan- The Village opposes institution of such a plan.
3. Accrual of Sick Leave- The Village seeks a change in the current provisions for sick leave accrual. Those provisions now provide sick leave may be accrued on the basis of one workday (24 hours) per month to a maximum of 1500 hours accrual of unused leave. The Village desires those provisions be changed to one-half workday (12 hours) per month with a maximum accumulation of 1,680 hours of unused leave.

The Final Offer of the Union is:

1. Wages--Effective 1/1/77 a 4% increase on 1976 rates
Effective 7/1/77 a 4% increase on rates in effect on 6/30/77

2. Institute Longevity Pay Plan as follows:

\$ 5 per month additional after 5 years
\$10 per month additional after 10 years
\$15 per month additional after 15 years
\$20 per month additional after 20 years

3. Accrual of Sick Leave- The Union seeks a change in the current provisions for sick leave accrual. The Union would reduce the current rate of accrual from one workday (24 hours) per month to 18 hours per month. It would increase the maximum level of accumulation from the present 1500 hours to 2160 hours.

Pertinent Sections of the Wisconsin Statutes: Section 111.77(6) of the Municipal Employment Relations Act contains the following criteria to be applied by the Arbitrator in final offer arbitration cases of this sort: 111.77(6). In reaching a decision the arbitrator shall give weight to the following factors:

- (a) The lawful authority of the 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 these costs
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally
 - 1 In the public employment in comparable communities
 - 2 In private employment in comparable communities
- (e) The average consumer prices for goods and services, commonly known as the cost of living
- (f) The overall compensation presently received by the employees, 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.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and working conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The offers of the parties will be considered in light of these criteria.

I. Wages

A. The lawful authority of the Employer. There is no question in the case of the lawful authority of the Employer to pay or not pay the amount requested by the Union. Nor is there any question of the authority of the Employer to grant the longevity or sick leave changes requested by the Union.

B. The stipulations of the parties. The only stipulation of the parties in this case was the 1976 Labor Agreement, submitted as Joint Exhibit 1.

C. The Interest and Welfare of the Public and the financial ability of the unit of government to meet these costs.

The parties concentrated their presentations on the ability or inability of the Employer to pay the requested increase. Both presented extensive documentation and testimony in support of their positions.

The Position of the Village. The Village maintains it is unable to meet the requested wage increase sought by the firefighters. The ability upon localities

to levy local taxes has been limited by the Wisconsin legislature. Pursuant to the levy limitations Greendale was permitted to increase its 1977 levy to \$1,162,817, of which \$1,160,224 was actually levied. Due to a methodological difference the parties disagreed on the percentage the actual levy was of the allowable levy, the Village calculating it at 99.8%, the Union at 97.7%. According to the Village, whichever figure is used, it is clear the Village is making a maximum financial effort and taxing to the limit permitted by the State.

In order to cope with financial difficulties during the forthcoming fiscal year, the Village for the first time established a contingency fund of \$28,986. This fund is to be used for any salary increases in excess of the budgeted amount plus any other contingencies that might develop. According to the Village, shortfalls in revenue known to be occurring will necessitate expenditures from the contingency fund in addition to any expenditures for salaries not budgeted. Interest on investments is running \$10,000 below the budgeted figure. Monies from the Federal Revenue Sharing program will be \$4,000 less than anticipated. Fines and forfeitures are running below estimates and if the current rate of shortfall persists for the year will be below anticipated amounts by \$17,000. The total revenue decrease in 1977 is estimated at \$27,959, or \$1027 less than the amount in the contingency fund. Consequently, the Village cannot meet the demands of the Firefighters which exceed the budgeted amount, according to the Village, by \$5,933.65.

The Position of the Union. According to the Union, the Village is able to fund its proposal without difficulty. It notes that the Village budget shows an increase in the provision for overtime from \$11,000 in 1976 to \$12,000 in 1977. In fact, only \$6594.35 was expended for overtime in 1976. The Village Budget, Employer Exhibit 12, shows the \$12,000 budgeted for overtime in 1977 but carries the following notation. "No increase in anticipated overtime except for adjustment in hourly rate." This, according to the Union, means that there is approximately \$5,000 in the overtime account that is available to fund its proposal.

The Union also maintains that there are additional funds available in the pension account of the Fire Department budget. That amount of \$70,811, is according to the Union, in excess of needed funds by approximately \$4000.00.

Greendale has had the practice of hiring part time fire fighters. The budget calls for 19 such people who are not part of the bargaining unit. At the date of the hearing, there were 12 part time firefighters actually employed. The Union suggests substantial savings may be realized by not hiring additional part time fire fighters or by deferring such hiring until later in the year.

The Union also points to the existence of the \$28,986 Contingency Fund. It claims the monies in that fund are available to pay the requested increase.

Finally, the Union cites Employer Exhibit 15 in support of its position that the Employer can meet its demands without undue financial hardship. That Exhibit shows the budgeted expenditures of the Village for 1977 and the expenditures through March. For the Village as a whole, 20.6% of the budget was expended, though 25% of the year had passed. The Union asserts this shows the Village is in sounder financial condition than it claims and is able to meet its demands.

Discussion: It is clear from the evidence presented at the hearing that the Village is making a great financial effort within the limitations imposed by the State. This is a strong point in its favor. Union Exhibit 9, showing the tax situation of communities in the Milwaukee metropolitan area indicates that Greendale's ranking among the 30 communities in the survey advanced from 17th in 1976 to 14th in 1977. This substantiates the Village point that it is taxing heavily. In fact, the tax burden of Greendale taxpayers is increasing relative to other communities in the area.

The Village in pointing out that the contingency fund is largely committed has another point in its favor when arguing its inability to pay.

The Employer, in its Brief on page 8, discusses in great detail its claim of inability to pay. It points out that the figure shown in the budget for Fire

Department salaries in Account No. 421.11 is \$279,745. "However, the individual salaries actually anticipated to be paid amounted to \$276,334, \$3,411 less than the amount budgeted." Thus, the Employer indicates that there is at least \$3411 more available to meet the claim of the Union. Using the base of \$276,334, adding \$12,000 in overtime plus total pension contributions including prior service credits of \$70,037 (\$774 less than the budgeted amount) yields an additional \$4,185 to meet increases without dipping into the contingency fund. Since the parties are in agreement that the total difference between their respective positions is approximately \$5700 to \$5,900 and use of the actual anticipated expenditures for salaries generates an additional \$4,185 this is a strong point for the union position.

The Union point on utilization of overtime is also well taken. While the budgeted amount increased from \$11,000 to \$12,000 from 1976 to 1977, Page 46 of the Village Budget indicates the Village does not expect to spend more on overtime this year than last, except for the wage increase. Assuming, from the point of view of the Village the worst case, that the Arbitrator grants the Union demand, overtime expenditures will increase from \$6594.35 to \$7001.25 if overtime is used in the same amount in 1977 as in 1976. This indicates the likelihood that the Union assertion of excess funds in the overtime account of \$5000.00 is plausible. This is an additional item favoring the Union on the question of ability to pay.

D. The Comparison of the wages, hours, conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services with other employees, generally in the public service.

1. Wages: The position of the Village. The Village argues that though its offer will provide an increase of 4.4% to firefighters, that increase represents a rate increase of 7% at the end of 1977. This, notes the Village, is above the rate increase granted by most municipalities in the Milwaukee area.

The Village has also agreed to assume the full increase in the health insurance premium, \$309.00 per year, the highest premium increase agreed to in the Milwaukee area. Village Exhibit 3 indicates that the average increase in health insurance premium in the Milwaukee area, communities to the south, north and west of the City of Milwaukee, is \$127.00. The total increase to be paid firefighters at the close of 1977 is \$1,260.00.

Table I

1977 Wage Increases, Health Insurance Premium Increases and Levy Limits as % of Allowable Limits, Selected Milwaukee Communities

	1977 Annual Rate Increase	1977 Annual Health Ins. Increase	Total	1977 Levy Limit as % of Allowable
Cudahy	\$ 910	\$101	\$1011	67.4%
Oak Creek	1,124	193	1317	48.7
St. Francis	972	50	1022	NA
Waukesha	600	119	719	68.6
West Allis	753	97	850	67.3
West Milwaukee	702	132	834	NA
Greendale	951	309	1260	97.7
(Village Offer)				

Source: Village Brief, page 14, Union Exhibit 10.

These data, argue the Village, indicate that its offer compares favorably to that of other communities in the Milwaukee area, particularly when the impact of levy limits on Greendale is considered. These data also indicate, according to the Village, that its offer will produce a total compensation for the Greendale firefighter above the 1977 average for the Milwaukee area. (Employer Brief, page 15)

The Village introduced an additional argument in the area of comparability. It indicated that its offer will decrease the differential between Greendale police and firefighters. This will be true if either offer in a pending arbitration proceeding

between the Village and the Police is selected. If the Village offer is preferred by the Arbitrator in that dispute, the differential between police and firefighters will decrease from 8.0% in 1976 to 5.5% in 1977; if the police offer is preferred, the differential will decrease to 6.5% (Village Brief page 16.)

The position of the Union. The Union argues strenuously that the communities selected by the Village for comparison purposes are inappropriate. It cited for the record WERC cases Nos. 18695 (Stern), 20972 (Zeidler), 20047 (Weisberger) and 18585 (P. Marshall) where those Arbitrators used communities identical or substantially identical to those cited in this case.

Table II

Bi-Weekly Salary of Firefighters in Greendale Compared to Highest Bi-Weekly Salary in Six other Southern Milwaukee County Communities

Community	1974	Rank	1975	Rank	1976	Rank	Jan. 1977	April 1977	July 1977
W. Milw.	\$471.69	1	\$517.85	2	\$554.77	2	\$582.46		\$582.46
St. Francis	447.99	5	496.15	6	526.15	6	552.47		563.55
Oak Creek	461.12	3	502.62	5	540.31	5	583.54		583.54
Greenfield	446.82	6	511.77	3	550.88*	3	587.25	597.28	COLA
South Milw.	460.62	4	523.93	1	559.92*	1	573.91	587.69	COLA
Cudahy	464.31	2	509.95	4	548.20	4	583.20		583.20
Greendale	444.00	7	478.97	7	522.68	7	543.59**		565.33
							538.68***		543.58***

*Have Cost of Living Adjustment (COLA) protection

**Union Final Offer

***Village Final Offer

Source: Union Exhibits 17, 18, 19, 20, 2.

Table II. above, constructed by the Arbitrator indicates that Greendale firefighters have consistently ranked at the bottom of the Union comparison group. The Union argues that if the position of the Village is accepted, the differential between Greendale firefighters and firefighters in the Union comparison group will widen.

The Union also introduced material to show that the Village offer represents the lowest percentage increase among the southern Milwaukee suburbs. This is shown in Table III.

Table III

Salary Increases in Percentage, 1977

Community	1977 % Increase
West Milwaukee	5
St. Francis	6% Average
Oak Creek	8
Greenfield	6.6% plus COLA
South Milwaukee	2.5% plus COLA
Cudahy	6.4%*
Greendale	6.16 Average- Union offer
	4.34 Average- Village offer

*Per arbitration in WERC Case II, No. 20972 MIA-262 No. 15118-A (Zeidler)

Source: Union Exhibit 21.

Table III introduced by the Union indicates that the position of the Employer is substantially below that being placed into effect by other comparable communities. The Union position, a 6.16% average increase is more in keeping with settlements put into effect with communities regarded by the Union as comparable with Greendale.

These interpretations of Table III, put forward by the Union, argue for acceptance of its position. If the Union position is accepted it will result in Greendale firefighters moving up one place in the ranking of southern Milwaukee suburbs. It will place them above St. Francis firefighters, an 11-man department.

The Union indicates that if the position of the Village is accepted, the Greendale firefighter will fall further below the next highest community than was the case in 1974. In that year, Greendale was \$2.82 below Greenfield, the next highest community. If the Village position is accepted, it will be \$19.97 below St. Francis on a bi-weekly basis. If its position is accepted, Greendale firefighters will be \$1.78 above St. Francis but still substantially below the next highest community, Cuday.

A final comparison made by the Union is between the firefighters and police of Greendale. Union Exhibit 21 indicates there is an 8.0% wage differential between the two services, in favor of the police. This is an understatement according to the Union since Greendale police are permitted to earn up to \$45.00 per month Educational Incentive Pay, which is not available to firefighters. Police in Greendale also are covered by a longevity pay plan which the Union is seeking in this proceeding. Among the southern Milwaukee suburbs used for comparison purposes by the Union, Greendale has the widest spread between police and firefighter wages. The next highest gap is in Oak Creek, 5.8% in favor of the police. The other communities cluster in the 2.0-3.0% range with the exception of St. Francis which has police only 0.6% ahead of firefighters. According to the Union these data show the need for acceptance of its proposal.

Discussion: The Village is on firm ground when it points out that it is assuming a substantial increase in the health insurance premium during 1977. Despite the fact that firefighters do not see these dollars reflected in take home pay, such increases represent real and substantial expenditures for the Village. The Village is also correct in pointing out that when Greendale is compared to other Milwaukee area communities its offer reflects the impact of the levy limits.

The Union has a very weighty argument when it shows that the gap between the Greendale firefighter and firefighters in other nearby communities will widen if the Village offer is accepted. In 1976 the Greendale firefighter was \$3.46 behind his counterpart in St. Francis, the next highest community. If the Village offer is accepted, he will be \$19.97 behind the St. Francis firefighter at the end of 1977. If the Union offer is preferred, the Greendale firefighter will be \$1.78 ahead of St. Francis.

The Union is also correct in placing stress upon the percentage increase given in nearby communities. Many years ago it became common practice in Industrial Relations to recognize the concept of "coercive comparisons." Briefly stated, this concept indicates that in addition to the absolute level of wages, people are concerned with their wage in relation to other workers with whom they compare themselves. Clearly communities near Greendale, to the south of Milwaukee, are giving larger percentage increments this year than that envisaged by the Village offer. There are strong considerations of equity that argue in favor of acceptance of the Union position applying this comparability criteria. If the Village offer is accepted, the percentage increase for Greendale firefighters will be .66% below that put into effect by West Milwaukee, the next highest increase 5.00% versus 4.34%. At the same time, West Milwaukee is well ahead of Greendale when wages are compared, and the spread between the two communities will grow if the offer of the Village is selected. This argues in favor of acceptance of the Union position.

When the Union points out the large gap between police and firefighter salaries in Greendale compared to other communities, it makes another good point. There is nothing fixed and sacred about the relationship of wage rates between the two services, but Greendale does deviate from the pattern by a considerable amount, to the detriment of the firefighters. This omits any consideration of the longevity pay plan and educational incentive pay available to police. Both the Village and Union offers will reduce the differential between the services so the Arbitrator has not given great weight to this factor.

Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally (2) in private employment in comparable communities.

Wages: Position of the Village. At neither the hearing nor in its Brief, did the Village speak directly to this criteria.

Position of the Union. The Union introduced Exhibits 26 and 27 indicating that firefighters in Greendale perform some duties related to building tradesmen. Additionally, their wage is above that of some building tradesmen covered by four local unions in the Milwaukee area.

Discussion: It is very difficult to establish that firefighters are comparable to building tradesmen. This is due to the seasonal nature of construction work, the different hours worked by each group, and the primary function of firefighters versus the primary function of building tradesmen. While Greendale firefighters will receive less than most building tradesmen on a bi-weekly basis this does not establish the unfavorable position of the firefighters. Seasonality and regularity of employment are important factors to be considered. This Arbitrator gives more weight to comparisons of public employees, particularly those having the same duties in similarly situated communities. For these reasons the position of the Union on this criteria has not been given weight by the Arbitrator.

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

Position of the Village. The Village argues that its offer is consistent with increases in the cost of living. The December, 1976 Consumer Price Index was 4.8% higher than the year earlier figure. Since the prior agreement between the parties expired last December 31, the Village argues the relevant figure is the one in effect at that time. Even using the Milwaukee area index, the Village offer is only slightly below the 1976 percentage increase according to the Employer. Adding increased costs for health insurance premiums would indicate the Village is keeping pace with the increase in the cost of living, asserts the Employer.

Position of the Union. The Union insists the proper period to use when utilizing this criteria is the most recent one for which data is available. At the time of the hearing, the 1977 CPI for Milwaukee through February, 1977 was available and it had increased 6.8% over the year earlier period. The Union position of a 6.16% increase would not keep firefighters whole with inflation in the Milwaukee area.

Discussion: There are substantial methodological differences between the parties on this issue. The Village uses the United States City Average Consumer Price Index for the year ending December 31, 1976. The Union uses the Milwaukee Consumer Price Index for the year ended February, 1977. Neither party utilized the seasonal adjustment factor. It is common in wage arbitration cases for the parties to differ on the proper index and base period. Generally the latest index available is used and the proper wage figure is usually the basic wage rate.¹ The most recent index available to the Arbitrator is dated May 20, 1977 and indicates that the most recent increase of the U.S. City Average Consumer Price Index was at an annual rate of 6.8%. This is closer to the Union offer on wages than the Employer offer. In only one month thus far in 1977 has the rate of increase in the CPI been under 6.0%.

The Union, using the Milwaukee area CPI in its Exhibit 30 shows that regardless of which offer is selected by the Arbitrator, the Greendale firefighters will be either slightly ahead or slightly behind the 1974-76 Milwaukee Cost of living increase. On the other hand, some weight must be given to expectations about the future. Given the rate of increase in the US Consumer Price Index during the first four months of 1977 it is reasonable to expect a rise in the CPI during 1977 in the vicinity of 6.0%.

1 See Frank and Edna Elkouri, How Arbitration Works, Bureau of National Affairs, Inc., Washington, D.C. 1976. pp. 763-764.

Given that the Milwaukee index as cited by the Union exceeds the Village offer by a considerable margin and the U.S. Index through April indicates that inflation during 1977 will also exceed the Village offer, the weight of this evidence is in favor of the Union position.

- F. The overall compensation presently received by the employees, 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.

Position of the Village. The Village points out that in 1976 total salary and benefits of a firefighter in Greendale were only slightly below those of the average of 14 Milwaukee area departments. Village Exhibit 6 shows the total of such salaries and benefits to be \$20,551 on average and \$20,495 for Greendale. This puts the Greendale firefighter \$56.00 below the 14 community average cited by the Employer. In its Brief, the Village asserts its offer will place the Greendale firefighter above the average for the 14 communities used by the Employer for comparison purposes.

Position of the Union. The Union indicates that in addition to factors cited earlier under other criteria, five of the six southern Milwaukee suburbs to which Greendale assertedly compares pay health insurance premiums for firefighters after they have retired. Greendale does not. This taken together with other items discussed earlier warrants a finding for the Union based upon this criteria it insists.

Discussion: While Village Exhibit 6 shows Greendale firefighters slightly behind the 14 community average used as a comparison, there was no evidence introduced to support the assertion that the Village offer will result in higher than average total compensation in 1977. This Arbitrator places more reliance on the base wage rate, as indicated in the discussion of the Consumer Price Index above. The Union has a point in its favor when it indicates that five of the six communities in its comparison group pay health insurance for retired firefighters. On balance, the Arbitrator is unable to state with confidence that either the Village or the Union offer is to be preferred on application of this criteria.

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

The only change during the pendency of these proceedings of which the arbitrator is aware is the publication of the April, 1977 Consumer Price Index which has been discussed elsewhere.

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

The Arbitrator is not aware of any other factors to be taken into consideration.

Further discussion: While Chapter 111.77(6) of the Wisconsin statutes sets forth specific criteria for the Arbitrator to consider it does not specify the weight to be given each standard. That is for the Arbitrator to decide and will vary with the circumstances of each case. It is unquestioned that the most widely used standard in interest arbitrations is prevailing practice.² Under Wisconsin law that is found in criteria d, e, and f. This Arbitrator follows the normal practice and places greatest weight upon prevailing practice. Examination of the points made by the parties indicates that these criteria, on balance, favor the position of the Union. The Arbitrator does not disregard the claim of inability to pay raised by the Village, but it is not, by itself, sufficient to outweigh the other points made by the Union. The Arbitrator is well aware of the less than robust financial condition of the Village. But there is some money available to meet the claim of the Union. In the overtime fund, the Employer indicates an increase in the budgeted amount, but does not expect to use the full amount budgeted. These funds budgeted but not planned to be spent total

2 Elkouri and Elkouri, Op. Cit., Page 746.

\$5000.00 towards a difference between the parties of approximately \$5700.00. Planned salary and pension expenditures are \$4,185 less than shown by the budget. It must be concluded that the monies are available to fund the proposal of the Union. That proposal is the more reasonable of the two when compared to the Consumer Price Index increase and the increments agreed upon by other Milwaukee area communities and their firefighters. Based upon this record the conclusion is inescapable that the position of the Union is superior on the wage issue.

II. Longevity Pay.

The most relevant criteria applicable to this issue is 111.77(6)(d):

Comparisons of the Wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment or of other employees performing similar services and with other employees generally: (1) in public employment in comparable communities.

Position of the Village. The Village claims that the proposal of the Union is ambiguous and without foundation. The Village also makes the point that new benefits should be the result of voluntary collective bargaining, rather than the rulings of an Arbitrator.

By wording its proposal to call for \$5 per month additional after 5 years, \$10 per month after 10 years etc. the Village claims the Union is raising questions that cannot be answered. For instance, what are "years"? Are they years of service in the Fire Department, the Village, years of continuous service or may there be a break in service? Is it added to salary for computation of overtime payments?

Position of the Union. The Union submitted the following exhibit in support of its position on longevity pay.

Table IV

Longevity Pay in Southern Milwaukee Area Communities

Community	After 5 years	After 10 years	After 15 years	After 20 years
West Milwaukee	\$5.00	\$10.00	\$15.00	\$20.00
St. Francis	5.00	10.00	15.00	
Oak Creek	5.00	10.00	15.00	20.00
Cudahy	5.00	10.00	15.00	20.00
Greenfield	6.00	12.00	15.00	18.00
South Milwaukee	5.00	10.00	15.00	20.00
Greendale	0	0	0	0

Source: Union Exhibit 52.

The cost for the Union proposal is calculated at \$1140.00. This amount is included in the earlier discussion presenting the difference between the positions of the parties as amounting to approximately \$5700.00. At the hearing the Union argued that this was not a new benefit but a benefit in common practice that had been denied firefighters in Greendale.

Discussion: The Village point concerning the ambiguity of the Union position is very well taken. Clearly there are substantial questions raised by the sketchy nature of the Union proposal. Neither the Village nor the Arbitrator can know if the "years" referred to by the proposal are years of service with the Village, the Fire Department, continuous years of service or total years of service giving credit for years of service before and after breaks.

The Union argument that longevity is common in south side communities may be extended to other communities in the Milwaukee area. Employer Exhibit 4 shows only three suburban communities, Brown Deer, Shorewood and Greendale not providing longevity payments. This exhibit, plus the material in Table IV bolsters the Union argument that this is not a new benefit but an extension of a benefit denied Greendale firefighters.

Recognizing that substantial questions of language exist concerning the precise method of implementing the Union proposal, the Arbitrator is convinced that longevity pay represents the prevailing practice in the Milwaukee area. This being so, the record indicates the Union position is superior on this issue.

III. Sick Leave Accumulation

The relevant criteria to apply to the issue of sick leave accumulation are 111.77 (6)(d) and 111.77(6)(e)

111.77(6)(d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally (1) in the public employment in comparable communities.

111.77(6)(d) The overall compensation presently received by the employees, 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.

Position of the Village: The Village indicates it has been concerned with use of sick leave for several years. According to the Village, use of sick leave by Greendale firefighters has been excessive. In 1973 the parties agreed to reduce the amount of sick leave that could be accumulated to a maximum of 1500 hours. In 1975 the Fire Department made an attempt to police use of sick leave in a fashion that resulted in the filing of a prohibited practice charge by the Union. The charge was resolved before a decision was reached by the Wisconsin Employment Relations Commission. In demonstrating that use of sick leave is excessive in Greendale the Village surveyed the experience of 14 other communities in the Milwaukee area. Excluding long-term usage, the experience of those communities showed a high of 3.3 duty days per year in West Allis and a low of .3 days in South Milwaukee during 1976. Greendale firefighters used 5.7 duty days. The average of all 14 departments surveyed was 1.9 days. These figures show the Greendale firefighters use 3.8 more duty days on average than do firefighters in the 14 comparison communities used by the Village.

According to the Village the 1976 experience was not unique. In 1974 the average amount of sick duty days was 5.8 days per year. In 1975 it was 9.9 duty days per year. Through April 30, 1977 Greendale firefighters had averaged 3.42 duty days of sick leave per employee. At this rate, claims the Village, they will exceed the average number of sick days off per employee recorded in 1976.

Table V

1976-77 Sick Leave Provisions for Firefighters in the Milwaukee Area

	Annual Hours	Hours of Maximum Accumu.
Brown Deer	168	1,344
Brookfield	120	Unlimited
Cudahy	288	2,880
Glendale	288	2,016
Greenfield	288	3,600
Oak Creek	144	3,120
St. Francis	360	1,800
Shorewood	180	1,800
South Milwaukee	288	Unlimited
Waukesha	Chief's discretion	
Wauwatosa	144	1,848
West Allis	144	1,680
West Milwaukee	144	Unlimited
Whitefish Bay	168	1,872
Greendale 1976	288	1,500
Greendale 1977		
Village Offer	144	1,680
Greendale 1977		
Union Offer	216	2,160
Average Excluding Greendale	209	2,196*

*Excluded cities with unlimited accumulation and Waukesha
Source: Employer Exhibit 7, Calculations of the Arbitrator.

The Village notes that its proposal of 144 hours per year (12 hours per month) is not exceptional in the Milwaukee area. Of the 14 suburban fire departments used by the Village for comparison purposes, 5 grant 144 hours or less of sick leave. Five also grant 288 or more hours of sick leave per year.

Position of the Union: The Union admits there has been a high rate of sick leave utilization by Greendale firefighters. It attributes this to the relatively low number of hours Greendale firefighters have been permitted to accumulate. According to the Union, if Greendale firefighters were permitted to accumulate a higher number of hours they may (emphasis in Union Brief) save them for use in event of serious illness or accident. The Union also asserts it has demonstrated its reasonable attitude on this issue by agreeing to reduce the maximum number of hours that may be accumulated from 288 in the current Agreement to 216 in the 1977 Agreement.

The Union proposal for accumulation per year of 216 hours represents a reduction of 25% in the amount of hours that can be accumulated yearly. Its proposal of a total accumulation of 2160 hours is somewhat high but still below the 14 community average calculated by the Arbitrator. (The 14 community average is an understatement due to the presence of 3 communities that permit unlimited accumulation of sick leave.)

Discussion: It is clear from the record that Greendale firefighters have a higher utilization rate of sick leave than do firefighters in other Milwaukee area communities. (Employer Exhibit 5) The Employer has gone to great lengths to curb this high level of utilization. Now it is seeking to have the Arbitrator reduce utilization by mandating a reduction in the amount of leave than can be earned each year. The Arbitrator is not convinced this is the appropriate method to secure a reduction in sick leave utilization. The Agreement in Article III (Joint Exhibit 1) provides machinery for dealing with the problem of excessive use of sick leave. The Arbitrator is directed by the Municipal Employment Relations Act to apply specified criteria to the resolution of disputes. He cannot substitute his judgement for managerial or union action or lack of action. If sick leave use is high, as it is in Greendale, the Village has a contractually agreed upon procedure to follow in an attempt to reduce it. The Arbitrator is restricted to determining the relative merits of the parties proposals in light of the statutory criteria. Chapter 111.77 (d)(d) deals with prevailing practice. It is clear from Table V that the proposal of the Union is closer to prevailing practice in the Milwaukee area than is the proposal of the Village. This is a strong point arguing for acceptance of the Union's position.

Application of 111.77(6)(f) to the Union proposal results in a standoff. The rate of accumulation will fall if the Union proposal is accepted but the number of days that may be accumulated will rise. On balance, the 25% decline in the accumulation rate is outweighed by the 44% increase in the amount of hours that may be accumulated. This is a point in favor of the Employer.

The Arbitrator earlier indicated that the statute provides no guidance concerning the weight to be given each of the specified criteria. This Arbitrator gives great weight to prevailing practice. In the area of sick leave accumulation, the position of the Union, as set forth in Table V is closer to prevailing practice throughout the Milwaukee area than is the position of the Village. For this reason, the Arbitrator finds the position of the Union superior on the issue of sick leave accumulation.

Summary and Award: Based upon the criteria found in Section 111.77 (6) of the Wisconsin Statutes it must be concluded that the position of Firefighters Local 1777 meets the standards arbitrators are to follow more closely than does the position of the Village of Greendale. This is true on all issues before the Arbitrator in this case; wages, longevity pay and sick leave accumulation. The findings of the Arbitrator that produced this conclusion have been outlined in detail above. Having reached this conclusion, the Arbitrator is required to make the following AWARD:

The offer of the Firefighters Local 1777, International Association of Firefighters be included in the agreement between the Local and the Village of Greendale, Wisconsin as more closely conforming to the statutory guidelines for final and binding interest arbitration under the Municipal Employment Relations Act.

Dated in Madison, Wisconsin this 29th day of June, 1977

Harry Graham /s/
Harry Graham
Arbitrator