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STATE OF WISCONSIN

SEP 2 1981

ARBITRATION AWARD

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Arbitration between	:	
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LOCAL 2477, INTERNATIONAL ASSOCIATION OF	:	
FIREFIGHTERS, ALLOUEZ FIREFIGHTERS	:	
	:	Re: Case XVI,
and	:	No. 27473
	:	MIA-567
TOWN OF ALLOUEZ	:	Decision No. 18598-A
	:	

Appearances: For the Town of Allouez: David J. Condon, Town Attorney, of Condon, Hanaway, Wickert & Fenwick, Ltd., 801 East Walnut, P.O. Box 1126, Green Bay, Wisconsin 54305; and Clarence Matuszek, Town Administrator, 1649 South Webster, Green Bay, Wisconsin 54301.

For the Union, Local 2477, International Association of Fire Fighters: James Lambert, President, 2331 Oakwood Avenue, Green Bay, Wisconsin 54301; and Charles Merkle, Representative, International Association of Fire Fighters, 1605 Wicklow Way, Madison, Wisconsin 53711; Richard V. Graylow, Esq., and Cindy Estlund, of Lawton & Cates, Tenney Building, 110 East Main Street, Madison, Wisconsin 53703, on the brief and reply brief.

This is an interest arbitration proceeding pursuant to Section 111.77(3) of the Municipal Employment Relations Act. The jurisdiction of the arbitrator is limited to selecting either the final offer of the Union or that of the Employer.

The parties have had labor agreements since 1975. The most recent agreement expired by its terms on December 31, 1980. Negotiations by the parties for a renewal of the agreement commenced sometime in the latter part of 1980. Agreement was not reached and on February 6, 1981 the Union filed a petition with the Wisconsin Employment Relations Commission requesting initiation of final and binding arbitration pursuant to the above-mentioned terms of the statute. Following investigation of the dispute and attempts to mediate by a member of the Commission staff the Commission certified the dispute for arbitration. The undersigned was notified of his appointment as arbitrator by notice from the Commission dated April 28, 1981. A hearing was held at the Town Hall in Allouez on June 25, 1981. The parties were given an opportunity to present evidence to support their final offers, which had been dated April 1, 1981. No written record of the hearing was made other than the arbitrator's handwritten notes. Although it was agreed at the hearing that written briefs would be submitted to the arbitrator for exchange no later than July 16, the Union requested a two week delay. The Union brief was ultimately filed on July 30 and the briefs were exchanged on August 3. Although there had been no discussion of reply briefs at the hearing, the Union requested permission to file a reply brief in its original brief, and the Town's counsel made a similar request in a letter dated August 6. The arbitrator then asked that reply briefs be submitted to him for exchange by August 18. The reply briefs were duly exchanged on August 21. The record is considered closed as of August 18.

The Final Offers

A copy of each party's final offer is included as an appendix to this report and are marked respectively as Appendix "A" and Appendix "B".

Position of the Union

The Union supports its own proposals by comparing wages and other employment conditions of Allouez firefighters with those of the nearby communities of Two Rivers (population 13,500), Menasha (15,000), Neenah (23,000),^① Sturgeon Bay (9,000)^②, Kaukauna, (11,292), Appleton (57,143), Oshkosh (53,221), De Pere (14,892), and Green Bay (87,899). The population of Allouez is 14,882.

According to the Union's calculations, this would make for the following comparison of maximum rates (4th year in the Allouez Fire Department). The following comparisons are presented by order of magnitude.

<u>City</u>	<u>1981 Annual Wage (Maximum)</u>
Two Rivers	\$16,897
Kaukauna	16,903*
Allouez (Union proposal)	17,883**
Menasha	17,988
Oshkosh	18,240***
Appleton	18,699
De Pere	18,840
Green Bay	19,566

*The Town asserts that the correct figure is \$16,657.

**The Town asserts that the correct figure is \$17,941.

***The Town asserts that the correct figure is \$18,059.

The cities in the comparison were selected on the basis of both proximity and comparable size. The Town used the same cities in its comparisons (with the exception of Sturgeon Bay) but also added Manitowoc (population 32,547) and Merrill (9,578). The Union appeared to be willing to accept Manitowoc (\$17,616) as comparable but opined that Merrill (\$16,038) was too small, too far removed geographically, and did not have the characteristic of proximity to a larger city (as do Sturgeon Bay and Kaukauna, according to the Union.)

In viewing the comparisons the Union points out that the position of Allouez, if the Union's proposal is accepted, is still third from the bottom of the eight comparable cities and fourth from the bottom in a comparison of nine, if Manitowoc is added. The Union points out, however, that the most important comparisons are with Green Bay and De Pere. Geographically the Town of Allouez is a contiguous urban area sandwiched between those two cities. Of the six employees who have left to take jobs in other fire departments during the past three years, the Union asserts that four have gone to Green Bay and one to De Pere (the other went to Eau Claire). The Union argues that even though Green Bay is larger and De Pere is a city with more of an industrial base, the Town of Allouez cannot escape the effects that these two cities have upon the employees of the Allouez Fire Department. Both have annual earnings substantially higher.

^①Since Neenah was in arbitration, Neenah figures were not used.

^②Unlike the other cities, the Union had no labor agreement for Sturgeon Bay. The Employer objected to use of the figures for that reason and they have not been used herein.

The Town of Allouez fire fighters are covered by Social Security although none of the other comparable cities have it for fire fighters. While the Union admits that Social Security constitutes an additional benefit, the immediate effect (despite the Town's matching tax contribution) is to reduce each employee's take home pay by the amount of the FICA tax on his or her salary, currently about \$1,000 annually.

In addition to arguing that the comparisons support its proposal on wages, the Union asserts that the language of the labor agreement requires that the terms of Article 8.B., which the Employer proposes to eliminate, should be honored. This is so because Article 31, Duration, states that the agreement "shall remain in full force and effect to and including December 31, 1980 (and that) the contract shall renew itself automatically under the same terms and conditions until renewal thereof." In the view of the Union this requires that the cost of living clause in Article 8.B. should be made operative, thus increasing the wages by the amount of the increase in the Labor Consumer Price Index - U.S. City Average from November, 1979 to November, 1980. This is the amount proposed in the Union's final offer. Presumably the agreed upon addition of the phrase in Article 31: "until renewal thereof by the authorized signatures of the parties to the agreement" only strengthens the Union's position on this issue.

The Union disputes generally the Employer's proposal to eliminate Paragraph B. in Article 8., Salaries and Wages. The paragraph has been part of the agreement for several years. Earlier in the bargaining the Employer had proposed a three year renewal with a COLA clause. In view of that fact it ill behooves the Employer now to argue that it should be removed. In addition, all other organized units of the Employer have such a clause.

Present longevity payments are \$3.00 per two week pay period after five years and \$6.00 per two week pay period after ten years. There are currently three fire fighters with more than five years of service. The Union believes that turnover (eight in the past three years) is excessive among a force of only ten department employees and that an increase in longevity payments would help to increase the incentive of employees to stay in the Town fire department. The following table shows a comparison of this benefit among the cities listed as comparable by the Union (and including data from Manitowoc taken from the Employer's presentation). Although the figures are the same (except for slight differences for Menasha) the presentation follows the mode presented by the Town at the hearing rather than the mode presented by the Union. (see page 4)

The Union agrees that the longevity benefit is greater in its proposal than in a majority of other cities during the first twelve years of service, but because of the high turnover experienced in the past three years, it is desirable to provide this extra incentive for Allouez Fire Department employees to stay. And since there are only three fire fighters presently eligible for any longevity benefits (i.e., who have more than five years of service), the cost is low.

A similar table showing comparable vacation benefits is presented below, also following the mode of presentation by the Town. There were two small discrepancies between the figures presented by the parties at the hearing. In both cases the Town figure was considered accurate and has been used in the following table.

1981 Vacation Payment Benefits by Number of Years of Service

<u>City</u>	<u>1</u>	<u>2</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>	<u>12</u>	<u>14</u>	<u>15</u>	<u>17</u>	<u>18</u>	<u>20</u>
De Pere	3	6	6	6	6	9	9	9	9	9	9	9	12	12
Kaukauna	3	6	6	6	6	9	9	9	9	9	9	9	12	12
Manitowoc	3	6	6	7	7	7	7	9	9	9	9	9	10	11
Menasha	6	6	6	6	9	9	9	9	9	12	12	12	12	14
Merrill	6	6	6	6	6	6	9	9	9	12	12	12	12	15
Two Rivers	6	6	6½	7	7½	8	8½	9	10	10	10½	12	12	14
Appleton	2	5	5	6	6	6	8	8	8	8	11	11	11	14
Green Bay	6	6	9	9	9	9	12	12	13	13	13	14	14	15
Oshkosh	6	6	8	8	8	9	9	9	9	9	11	11	11	13
Allouez (Union)	3	6	9	9	9	9	9	12	12	12	12	12	12	12
Allouez (Town)	3	5	6	6	6	6	6	9	9	9	9	9	9	9

The same argument applies as in the case of longevity. Although the benefits proposed by the Union are relatively large when compared with those in the other comparable jurisdictions, this liberality is both desirable from the standpoint of reducing turnover and inexpensive as a result of the present composition of the fire fighting force employed by the Town.

As to the other changes in the labor agreement proposed by the Employer (characterized as take-aways by the Union) it is argued that no definite rationale has been presented. These will be treated here in the same order as presented in the Employer's final offer.

The clause that the Employer proposes to add to the sentence in subparagraph A. (4) of the Management Rights clause is viewed by the Union as an attempt to exclude a totally unknown kind and number of subjects from collective bargaining. In the view of the Union it is not enough to know that new rules and regulations are permitted by law and are not contrary to the terms of the agreement. If such rules and regulations have an effect upon members of the collective bargaining unit, there needs to be an opportunity to determine whether they are properly bargainable issues and to treat them accordingly.

As to the Employer's proposed change in the sick leave policy that would require a physician's certificate for absence because of injury or illness for "more than one shift day" rather than the existing wording that says "three or more consecutive shift days" the Union argues that no evidence of sick leave abuse has

agreement to rehire laid off employees would present a problem of any kind to the Employer. Furthermore, the requirement that employees taken back after a layoff should submit to a physical examination before rehiring carries the implication that such employees would be treated as new hires. This is contrary to the intent of the clause. As in the case of the sick leave policy, there is no evidence of a problem so as to support a change in the policy as expressed in the old agreement.

As to the Employer's proposal to increase the number of holiday hours for which fire fighters are paid on an annual basis, the Union has no objection. It is pointed out, however, that the sum of money calculated from the Union's proposed wage level for 96 hours is about the same as the sum calculated from the Employer's proposed wage level for 98 hours.

Position of the Employer

The Employer takes the position on the wage issue that there is no purpose in having a COLA clause in a one year agreement and that the Union has agreed to the one year duration clause. In response to the Union's argument that the other Town units have COLA clauses, the Employer points out that they are all multi-year agreements.

The Employer also points out that the CPI - U.S. City Average for Urban Wage Earners and Clerical Workers does not reflect cost of living conditions in the Allouez community and that there is another U.S. Department of Labor index for smaller communities that is a better reflection of cost of living changes. That index, which the Town asserts that it used in designing its own wage proposal, rose only 10.7 per cent in the November, 1979 to November, 1980 period. Furthermore, the \$15 per pay period supplement as of July 1, 1981, as proposed by the Union, is an extra 2.1 per cent increase in the wage that has no rationale at all. Its true purpose and the result of adopting it would be to divide the pay increases into two six month periods so as to inflate the size of the base at the end of the year. This device, which reduces the annual amount paid to each employee during 1981, makes the pay increase appear to be more modest. The higher rate has a lasting effect, however.

The Town would make somewhat different comparisons of its wages than the Union does. As indicated above, the Town would substitute Manitowoc and Merrill for Sturgeon Bay. The maximum base annual salaries (the W-2 figure without overtime and listed in order of magnitude) would compare as follows:

<u>City</u>	<u>1981 Annual Wage (Maximum)</u>
Merrill	\$16,705
Kaukauna	17,242
Two Rivers	17,648
Allouez (Town Proposal)	18,087
Manitowoc	18,244
Menasha	18,727
De Pere	19,476

This comparison puts Allouez in the middle of the comparable communities.

Although the Employer argues that its pay levels should not be compared with those of nearby larger cities, it points out that when paid retirement contributions are added to the base or W-2 annual figures, the total for Allouez is not so much lower

than the others. The following comparisons are presented:

<u>City</u>	<u>1981 Total Wage Cost (including paid retirement)</u>
Allouez (Town proposal)	\$23,034
Oshkosh	23,264
Appleton	23,944
Green Bay	25,774

In terms of these figures Allouez is higher than all the other smaller communities in the previous table except for De Pere (\$23,659).

As to its proposal not to change the longevity benefits in the old agreement, the Town points out (see table above) that at the five and ten year level it is competitive with the other smaller comparable communities and that some of those smaller communities with higher longevity allowances also have lower wage rates than Allouez.

On the vacation issue the Employer points out that at the five year level (see table above) this benefit (except for Two Rivers with 6½ days) is equal among the smaller comparable communities and that all are equal at the ten year level. The Town also points out that much of the proposal for increased vacations, as made by the Union, would have little meaning because it would be many years before the employees would have enough service to benefit.

As general support for its position the Town introduced comparative statistics at the hearing purporting to show that Allouez in 1980 had fewer total fire calls, fewer total rescue calls and fewer total emergency calls than any of the other comparable communities for which statistics could be obtained. It also had fewer total fire, rescue and service calls than most of the other comparable communities in terms of number per 1000 population. Only Two Rivers and Appleton among the communities compared had fewer such calls per 1000 population. The burden of this argument is that fire fighters in the Town of Allouez do not have as arduous jobs as their counterparts in the other comparable communities.

Although the Town does not argue inability to pay if the Union's final offer is chosen in this proceeding, it does point out that "in the past three budget years, Allouez has had tax levy limit increase referendums which have been defeated and thereby precluded the Town from increasing its levy."

The Town supports its proposal to add the wording to the Management Rights clause by saying that it is for "the purpose of avoiding future misunderstandings or problems." It supports its revised sick leave policy by arguing that it would conform this policy with that applying to other Town employees. Since other Town employees are required to have a physician's certificate for an absence of more than three calendar working days, the proposed wording of such a requirement for "more than one shift day" for fire fighters (who work a 24 hour day on, a day off, a day on, a day off, a day on, four days off) would result in a similar requirement in terms of calendar days.

The Town argues that the present wording in the Resignations, Lay-off and Rehiring clause "could result in substantial problems and expense for the Town if an employee was laid-off but had to be rehired under the contract when the employee's circumstances would dictate otherwise. This could also result in some civil

liability to the Town."

The Town also introduced an exhibit at the hearing that compared other conditions of employment with the comparable communities and which purported to show that "the Town's overall contract is rather typical, providing better benefits to its fire fighters in some areas, and lesser benefits in other areas."

The Employer discounts the importance of the turnover of fire fighters that has occurred. Although eight fire fighters have been lost in the past two years, four of them are said to have left for non-economic reasons and there is nothing in the record to indicate that the four others left because of dissatisfaction with their employment conditions.

In sum, the Town believes that it has made a reasonable offer, that its overall working conditions for fire fighters are competitive with the other communities with which it would compare itself, that it cannot expect to compete with Green Bay because of its size nor with De Pere because of its industrial base. The percentage represented by the Town's offer, overall, is 12.1. Other fire fighter settlements in the comparable communities, including the larger ones, have run from 8.5 to 12 per cent. The Union's proposed increase amounts to 15.1 per cent and is far out of line with other settlements for 1981.

Opinion

Although the briefs submitted by both parties were helpful to the arbitrator in arriving at an award, it is appropriate to note that the Union's brief contained some new data not introduced at the hearing. In its reply brief the Employer objects to all the Union's five exhibits in its brief on grounds that they include data not in evidence at the hearing. My rulings on that objection are as follows:

The table in the top half of the Union's Appendix 1 to the brief is taken from its own and the Employer's exhibits at the hearing. Aside from an apparent error in the clothing allowance for De Pere (\$125 instead of \$115) it appears to be accurate. The bottom part of the table, which compares figures for 1980 for Allouez, De Pere and Green Bay seems to contain data either not in evidence at the hearing (De Pere) or inconsistent with the figures in the 1980 labor agreement introduced at the hearing (Green Bay). Therefore the bottom half of Appendix 1 was not used in arriving at this award.

While Appendix 2 contains data that appeared in either Employer or Union exhibits at the hearing or in various labor agreements, some of the figures are questionable (De Pere clothing allowance and both Green Bay and De Pere E.M.T. allowances) and some figures are based on questionable assumptions that are not made explicit. For instance, the sick leave comparisons are

Sturgeon Bay has been eliminated) and have been used in arriving at an award in this case.

The Employer makes several impressive arguments to support its final offer. There is an incongruity in having a COLA clause in a one year agreement. The origin of such clauses involved a tradeoff of the stability of a multi-year contract for the employer in exchange for a guarantee of no loss in real wages for the employees. I was also impressed with the Employer's argument that the U.S. Department of Labor's small metropolitan Consumer Price Index better represents the conditions that buyers face in the Town of Allouez and that it is somewhat lower than the CPI for Urban Wage Earners and Clerical Workers.

On the COLA clause issue the Union's counsel has made an interesting argument in his brief. Since the Duration clause in the 1980 agreement between these parties states that "the contract shall renew itself automatically under the same terms and conditions until renewal thereof," and since Paragraph B of Article 8., Salaries and Wages, states that "in the event that this agreement shall cover a period which shall exceed one calendar year, the base rate. . .shall be adjusted for the second and each subsequent year. . ." (by the COLA clause), then the Employer is obligated to adopt the first part of the Union's final offer on wages. The Employer's counsel responds in his reply brief that the Union cannot both extend the old contract and have a new one. I wish to make it clear here that I am not ruling on this issue, which appears to be a point of law that I need not try to interpret. Nor does my award, as described below, depend for its rationale on this aspect of the Union's argument.

An arbitrator must also pay heed to the fact that in terms of percentage the Employer's own offer of 12.1 per cent appears to be in line with settlements in the adjoining communities of De Pere and Green Bay* and that the Employer's proposal conforms with the other settlements already made with other municipal collective bargaining units. One must also be impressed with the statistics on work load for this fire department, which seem to indicate that these fire fighters are not burdened with as much work as their colleagues in the comparable communities for which statistics were presented.

Having said these things, however, there is little more to recommend the Employer's offer. In terms of comparison of wage levels with the communities the Employer itself uses, Allouez is no better than in the middle. This position would meet the criterion of the law governing my deliberations, i.e., subparagraph (6)(d) of Chapter 111.77, if Allouez were a community in the geographical position of Merrill or perhaps even Two Rivers or Manitowoc. But it is not. It is squarely between and contiguous to Green Bay and De Pere, both of which have substantially better employment conditions. Despite the fact that Green Bay is much larger and despite the fact that De Pere has an industrial base that Allouez lacks, the Employer cannot ignore the proximity and the economic influence of these two communities. Although the Union indicated that six fire fighters had left in three years, the Employer said that the correct figure was eight in two years. The Union said that six left for higher paying fire fighter jobs. The Employer asserted that only four had done so. In either case, this is an average of two per year or twenty per cent of the total force of 10 on an annual basis. While that percentage would not be large as applied to manufacturing workers, it is a very high figure for a fire department.

* The Employer calculated the Green Bay wage increase as 9.2 per cent. The accurate figure appears to me to be 12.2 per cent. The De Pere increase was said to be 12.0 per cent.

Thus, even though the percentage increase represented by the Union's final offer is greater than percentage increases in the comparable communities and in the Town's other bargaining units, the resultant wage level would still not compare very favorably with the other communities used by the Employer if the Employer's final offer were adopted. At the total annual regular base wage or "W-2" rate, the Employer's final offer would put it ahead of Two Rivers and Kaukauna but behind Menasha, Manitowoc, and De Pere. (I do not perceive an acceptable rationale for using Merrill, a smaller city more than 100 miles away, as a basis for comparison.) If the Union's final offer were adopted, the total annual regular base or "W-2" rate comparisons would put Allouez ahead of Two Rivers, Manitowoc, and Kaukauna but behind Menasha and De Pere. (In both its wage exhibit at the hearing and in its argument in the brief the Town has emphasized a comparison of what it calls "Total Wage Economic Cost" among the cities used for comparison. That figure includes employer paid retirement contributions. Since Allouez is the only community among the comparables that has Social Security coverage for its fire fighters, this alone raises the Allouez figure by about \$1,000 and greatly improves its position in the comparables. From the fire fighters' standpoint, however, their own FICA tax tends to diminish their annual take-home pay by an equal amount. It has been my judgment in writing this award that the "W-2" figures should be used for comparison rather than the "Total Wage Economic Cost.")

The parties disagree on their computations of the Union's final proposal for wages. The Union calculated it as \$17,882.63 while the Employer calculated it as \$17,941. In my opinion both are inaccurate. The calculation that has been used in arriving at this award is as follows: The Monthly Labor Review for February, 1981 reports the increase for all items in the Consumer Price Index for Urban Wage Earners and Clerical Workers, U.S. City Average, between November, 1979 and November, 1980 to have been 12.6 per cent. Applying this percentage increase to the maximum bi-weekly rate of \$603.90 in the old agreement and multiplying that by 26 pay periods yields an annual figure of \$17,680. Half of that figure (January 1 to June 30) equals \$8,840. \$15 per pay period for thirteen pay periods during the second half of the year equals \$195, which added to \$8,840 for the second six months equals \$9,035. That figure added to \$8,840 for the first six months equals a total for 1981 of \$17,875. The maximum pay rate in the Union's final offer would be \$695 per pay period during the second half of 1981. The Employer is correct in its brief in calculating this as a 15.1 per cent increase in the rate of payment for fire fighters at the top of the scale.

Although, as indicated above, I am skeptical about the appropriateness of keeping the COLA clause in a one year agreement, I still believe that the comparability criterion and the inequity between these wages and those of the influential nearby communities must overbear this reservation.

In considering the other items in the final offers I have little hesitation in opting for the Union positions. As to the longevity payments it is only at the five and ten year levels that the Employer's proposal of no change shows favorable comparability. At all the other years a majority of the comparable communities have better conditions. Since only three of the employees in the unit are eligible for any longevity payments at present, this is not a significant cost item in the current year.

The situation concerning vacation entitlement is almost the same. Only at the five and ten year levels are the conditions presently in effect the same as in the comparable communities. By the time of nine years of service Allouez conditions are behind all the others. And although few employees of this Employer will qualify immediately for the improved vacation benefits, it will also not be a large cost item.

As the Union points out in its brief, "takeaways" must be scrutinized very closely. While there may be good reasons for the Employer's proposal regarding changes in the Management Rights, Sick Leave, and Resignations, Layoff and Rehiring clauses, no specifics were presented at the hearing nor in the brief. As to the proposed Management Rights clause language, it would preclude collective bargaining over any new rules and regulations that were not illegal and which were not specifically contrary to the terms of the agreement. This is the kind of clause that an arbitrator might reluctantly accept when presented with a final offer package that was otherwise more attractive than the union's final offer package. But even where the award was a toss-up, an arbitrator would be reluctant to choose a package having such a proposal in it. This is the kind of issue that should be decided by the parties, not by an arbitrator.

The proposed change in the sick leave clause is somewhat different. Accepting it would provide something closer to uniformity of policy between the different collective bargaining units. I am sympathetic with this kind of requirement of employee accountability. I have no reason to doubt that it is desirable from the standpoint of the Employer and I see nothing unreasonable about it from the standpoint of the employees in the unit, although I would have preferred that the Employer present some evidence that sick leave was being abused so as to better justify the change.

I can also understand the Employer's reasons for wanting to change the rehire policy so as to require a physical examination before rehiring. The wording chosen by the Employer, however, is offputting. As the Union suggests in its brief, why should the Employer need language saying that it is not required to rehire someone who has been discharged for cause? In any case, despite my understanding of the Employer's reasons for wanting laid-off employees to have a physical examination before rehiring, such a condition is inconsistent with the intent of the entire clause, which is to detail the seniority rights of laid off employees. If the rehired employee fails to meet the physical requirements of the job, his/her employment can be terminated. It would be simpler administratively for the Employer to deny reemployment to a returning laid off employee rather than to reemploy the person and then terminate him/her after failing the physical examination. But it is hard to see how the existing procedure would result, as the Employer asserts in its brief, in the danger of some civil liability to the Town if the physical examination were given before the reemployed person assumed any duties.

The Employer's offer of an extra two days to be added to the holiday pay is a generous gesture but hardly enough to offset some of the less attractive features of the entire proposal.

In arriving at this award I have carefully considered the factors spelled out in Section 111.77(6) of the statute. In my opinion the first three factors: (a), lawful authority of the employer, (b), stipulations of the parties, and (c), interests and welfare of the public and financial ability of the unit of government to meet the cost of the settlement, do not require any specific comment. As to (d), comparisons of wages, hours and conditions of employment of these employees with those of public and private employees in comparable communities, I have made the following judgments: Adoption of the Employer's final offer on wages would put the fire fighters employed by the Town of Allouez at or near a midpoint position in comparison with the other communities of fairly similar population size that were used by both parties to this proceeding. Adoption of the Union's final offer on wages would put these employees somewhat higher than the midpoint but below the top. Adoption of the Employer's final offer on longevity and vacation benefits would leave these employees below the midpoint in a similar comparison while adoption of the Union's final offer would put these employees somewhere above the

midpoint in the comparisons. Neither party attempted to make any comparisons of conditions in private employment. The key judgment that I have made in connection with factor (d) is that the geographical location of the Town of Allouez makes it necessary to give great weight to the employment conditions in Green Bay and De Pere. Despite the apparent fact that the fire fighters in the Town of Allouez do not have as heavy a load of work as the fire fighters in these adjoining communities, the movement of five of these employees to the Green Bay and De Pere fire departments in the past three years is an indication of the importance of establishing rates in Allouez that will deter that kind of movement and make these jobs attractive enough to retain the personnel. Therefore, despite the fact that the other nearby communities have different population and industrial bases and despite the fact that adopting the Union's final offer would result in a percentage increase overall that exceeds both the increases received by other Allouez organized employees and the increases reported for De Pere and Green Bay fire fighters, I am persuaded that the Union's final offer should be selected in this proceeding. With reference to subsection (e), cost of living, this judgment overbears my reluctance to continue a cost of living clause in a one year agreement, as well as the fact that the increase exceeds the increase in the cost of living as calculated from the clause in Paragraph 8.B. In effect, I view subsection (f) as the key factor in arriving at this award. I believe that for the sake of greater continuity and stability of employment for these fire fighters, their overall compensation ought to be improved so as to reduce inequities between their conditions of employment and those of the two adjoining communities. I do not believe that subsections (g), changes in the foregoing circumstances during the pendency of the proceedings, is a compelling factor in arriving at this award.

In my opinion, however, factor (h), such other factors normally or traditionally taken into consideration, is important in the consideration of the so-called non-economic proposals in the Employer's final offer. As indicated above, I have no trouble with the more stringent requirement for justifying sick leave, since it would make the provision covering these employees similar to the provision for other Town employees. But I am troubled by the proposed change in the Management Rights clause and the proposed change in the Resignations, Layoff and Rehiring clause. The former is a proposal of a form of zipper clause. It would reduce opportunities for the parties to bargain collectively on certain subjects that would be chosen by the Employer. For that reason I am opposed to it philosophically. It is far preferable that the addition of such a clause result from negotiations between the parties rather than being imposed by an outsider over the objection of one of the parties. The latter proposal, it seems to me, would make the clause inconsistent within itself. If seniority is to govern layoffs and reverse order of layoff is to govern rehiring, it seems contradictory that the physical examination should be required before rather than after the rehiring takes place. This may be a small point, but when coupled with the inclusion of a sentence that seems to me to be completely unnecessary about removing any obligation for the Employer to rehire an employee who has been discharged for cause, it makes acceptance of the Employer's proposed wording very difficult. In my opinion it is badly worded and ill-conceived. The Employer's proposals of changes in the Management Rights and the Resignations, Layoff and Rehiring clauses are more than minor considerations to me in choosing the Union's final offer in this proceeding.

AWARD

The Union's final offer is chosen as the award in this proceeding. The approved wage rates are to be in accordance with my calculations above.

Dated: September 1, 1981
at Madison, Wisconsin

Signed: _____


David B. Johnson
Neutral Arbitrator

UNRESOLVED LABOR AGREEMENT ISSUES
TOWN OF ALLOUEZ FINAL OFFER TO I.A.F.F. #2477

(The amendment language below is as it would appear in the labor contract except that underscoring designates language changes or additions. Notes in parentheses and script type are informational and not part of proposed contract language.)

7 1981

ARTICLE 2. MANAGEMENT RIGHTS

- A. (4) To enforce rules and regulations now in effect, new rules and regulations established pursuant to this Agreement, and new rules and regulations permitted by law and which are not contrary to the terms of this Agreement.

(To add clarifying language.)

ARTICLE 8. SALARIES AND WAGES

The Town shall pay employees a salary in accordance with job classification and length of service, for the calendar year or years covered by this agreement as set forth on the attached "Schedule 1."

(Paragraph B of this Article to be deleted. Remaining paragraph in this article is the same as previous contract except that letter A designation is no longer necessary since this is the only paragraph remaining in Article 8.)

ARTICLE 21. SICK LEAVE

- A. (3) In cases where the employee is absent because of illness or injury for more than one shift day, the Town may require a physician's certificate explaining the nature of the illness or injury and the necessity of the employee being absent from work.

(To permit Town to require a physician's certificate if employee is absent two or more shift days, instead of current three or more shift days. This will make this requirement the same as in labor agreements with other Town employees which permit the Town to require such certificate if employee's absence is more than three [calendar] working days.)

ARTICLE 22. RESIGNATIONS, LAYOFF AND REHIRING

B. Seniority shall be determined by the original date of employment. In the event of a layoff for any reason, employees shall be laid off in the inverse order of their seniority; that is, the last person hired shall be the first laid off. Rehiring shall be in reverse order of layoff; that is, the last person laid off shall be the first rehired. In no event shall any new employees be hired until

all regular employees shall be given the opportunity to return to work. An employee shall retain his or her seniority for a period of two (2) years from the date of lay-off. The Town shall have the right to require a physical examination of the employee before such rehiring. An employee shall have a right to be rehired if he or she is in such condition as may not then be cause for discharge or suspension, or which will not prevent such employee from properly performing the duties of the job for which the employee is to be rehired, but the Town shall not be obligated to rehire any employee who has been discharged for cause, or who would be subject to discharge for cause if hired. The Town shall notify such employee to return to work, and if the employee fails to report to work within three (3) calendar weeks from the date of notification he or she shall be presumed to have resigned, thereby forfeiting his or her right to be rehired and seniority. All rehired employees shall resume their previous rank. A physical examination conducted pursuant hereto, shall be at the employer's expense.

(To permit the Town to require a physical examination before rehiring, instead of after rehiring as now provided; and to clarify that the Town need not rehire an employee who is not physically or emotionally able to perform the job, or who has been or will be discharged for cause.)

1981 CONTRACT PROVISIONS
Allouez Firefighters

SCHEDULE I

Article 8. Salaries of Firefighters (all payments are Bi-weekly):

	<u>1st 6 mo.</u>	<u>2nd 6 mo.</u>	<u>2nd year</u>	<u>3rd year</u>	<u>Maximum</u>
Base Rate:	\$ 471.61	\$ 613.13	\$ 633.01	\$ 652.87	\$ 672.99
(Previous rates [1980])	\$ 468.48	\$ 550.39	\$ 568.23	\$ 586.06	\$ 603.90
Additional (longevity) pay after completion of:			<u>5 years</u>	<u>10 years</u>	
			\$ 3.00	\$ 6.00	

SCHEDULE II

Article 10. Holiday Pay:

Hours per calendar year: 98

(Increased from 96)

SCHEDULE IV

Article 19. Vacations:

<u>After completion of</u> <u>years of service</u>	<u>Work Days</u>
1 year	3
2 years	5
5 years	6
10 years	9

(No change.)

FOR THE TOWN:

Clarence Matuszek

Clarence Matuszek
Town Administrator

DATE:

2-1-81

International Association of Fire Fighters

AFFILIATED WITH AFL-CIO - CLC



James Lambert

PRESIDENT

2331 Oakwood Ave.

ADDRESS

Green Bay, Wi. 54301

CITY

STATE

SECRETARY

ADDRESS

CITY

STATE

April 1, 1981

DATE

Local No. 2477

APPENDIX "B"

Local 2477 - Final Offer

Article 8: Cost of living allowance as per 1980 language as of 1-1-81, \$15.00 as of 7-1-81. This on a bi-weekly basis.

Article 8-Schedule: Longevity. five years \$6.00. Ten years \$12.00 bi-weekly.

Article 19: Vacations. 1 year - 3 days
2 years - 6 days
5 years - 9 days
10 years - 12 days
18 years - 15 days

James Lambert