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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

ARBITRATION OPINION AND AWARD

In the Matter of Arbitration)
)
Between)
)
VILLAGE OF ALLOUEZ WISCONSIN)
)
And)
)
LOCAL UNION #2477, INTERNATIONAL)
ASSOCIATION OF FIREFIGHTERS)
)
_____)

Case 31
No. 41773
MIA-1409
Decision No. 26193-A

Impartial Arbitrator

William W. Petrie
217 South Seventh Street #5
Post Office Box 320
Waterford, Wisconsin 53185

Hearing Held

January 12, 1990
Village of Allouez, Wisconsin

Appearances

For the Employer

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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Village of Allouez, involving its Fire Department, and Local Union 2477 of the International Association of Firefighters, AFL-CIO, with the matter in dispute the terms of a renewal labor agreement for the period beginning January 1, 1989. The matters in dispute include the contract term of the renewal agreement, the wages to be paid during its term, the sick leave pay-out schedule, and the yearly amount of holiday pay for those in the bargaining unit.

After preliminary meetings between the parties had failed to result in a negotiated settlement, the Union on February 1, 1989 filed a petition with the Wisconsin Employment Relations Commission requesting final and binding arbitration pursuant to Section 111.77 of the Municipal Employment Relations Act. After the completion of a preliminary investigation by a member of its staff, the Commission on October 10, 1989 issued certain findings of fact, conclusions of law, certification of the results of investigation and an order requiring arbitration, and on October 26, 1989, it issued an order appointing the undersigned to hear and decide the matter as arbitrator.

A hearing took place in the Village of Allouez on January 12, 1990, at which time all parties received a full opportunity to present evidence and argument in support of their respective positions, and each party closed with the submission of post-hearing briefs, the last of which was received by the Arbitrator on February 22, 1990.

THE FINAL OFFERS OF THE PARTIES

The final offers of the parties, which are hereby incorporated by reference into this decision and award, consist of the following:

- (1) The Village proposes a two year renewal agreement covering January 1, 1989 through December 31, 1990, with the following changes beyond those already agreed upon by the parties.

(a) Wages as following for 1989: 1st 6 months - \$852.47; 2nd 6 months - \$1012.85; 2nd year - \$1039.95; 3rd year - \$1066.99; and maximum - \$1091.62.

Wages as follows for 1990: 1st 6 months - \$886.56; 2nd 6 months - \$1053.85; 2nd year - \$1081.53; 3rd year - \$1109.67; and maximum - \$1135.29.

(b) Modification of Article 10 of the prior agreement to provide for 143 hours of holiday pay in 1989, and 147 hours in 1990.

(c) Modification of Article 21, Section C of the prior agreement, to provide for the following maximum sick leave conversion payouts upon retirement, termination or death:

<u>Years of Service</u>	<u>Payment</u>
10	\$1,000.00
15	1,400.00
20	1,800.00
25	2,200.00

(2) The Union proposes a one year renewal agreement covering calendar year 1989, with the following changes beyond those already agreed upon by the parties.

(a) Wages as follows for 1989: 1st 6 months - \$876.39; 2nd 6 months - \$1,031.35; 2nd year - \$1,057.53; 3rd year - \$1,083.66; and maximum - \$1,107.45.

(b) Modification of Article 10 of the prior agreement to provide for 155 hours of holiday pay in 1989.

(c) Modification of Article 21, Section C of the prior agreement to provide for the following maximum sick leave conversion payouts upon retirement, termination or death:

<u>Years of Service</u>	<u>Payment</u>
5	\$1,200.00
10	1,600.00
15	2,000.00
20	2,400.00
25	2,800.00

THE STATUTORY CRITERIA

The decision and the award of the Arbitrator in these proceedings are governed by the criteria described in Section 111.77(6) of the Wisconsin Statutes, which provide in part as follows:

"(6) In reaching a decision the arbitrator shall give weight to the following factors:

- (a) The lawful authority of the employer.
- (b) The 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 employes covered in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally:
 - 1. In 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 employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (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 conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

POSITION OF THE EMPLOYER

In support of the contention that its final offer is the more appropriate of the two offers before the Arbitrator, the Village of Allouez argued principally as follows:

- (1) Preliminarily it offered the following observations with respect to the specifics of the final offers of the parties:
 - (a) That the Employer's final offer would entail wage increases of 3.5% for 1989 and 4.0% for 1990, while the Union's offer would entail a 5.0% increase for 1989.
 - (b) That the Employer is proposing increases in holiday pay of four hours in 1989 and an additional four hours in 1990, while the Union is demanding a sixteen hour increase effective January 1, 1989.

- (c) That the Employer is proposing sick leave payout increases of \$200.00 at each step for 1989, while the Union is demanding a new five year step and increases of \$800.00 at each other step.
- (2) In addressing the comparison criterion, that the Arbitrator should principally utilize the external comparisons urged by the Village, rather than those proposed by the Union, and that these comparisons support the position of the Employer; further, that arbitral consideration of internal comparisons also favors the selection of the final offer of the Employer.
- (a) That the Employer has carefully looked at settlement pattern comparisons, both internal and external; that the Union, on the other hand, is relying upon a narrowly based set of external comparisons, all of which have larger populations, more diverse community characters, different commercial and industrial bases, and significantly larger tax bases than does the Village of Allouez.
- (b) That the most appropriate external comparables in this proceeding, consist of the municipalities of Ashwaubenon, DePere, Green Bay, Kaukauna, Menasha, Neenah, Two Rivers and the Village of Allouez.
- (c) That internal comparisons are particularly important in these proceedings, and that negotiated settlements within the Street and Park Maintenance, the Water Department, and the Office Employees' bargaining units, all resulted in 3.5% wage increases for 1989.
- That the importance of internal comparisons has been emphasized by various Wisconsin interest arbitrators in their decisions and awards.
- (3) That the final offer of the Village is also favored by arbitral consideration of the following additional arbitral criteria.
- (a) In considering the stipulations of the parties, that the Arbitrator should note the 50% increase granted to EMT Paramedics; that the \$4.00 increase raises the level to \$12.00 per day, which is consistent even with the Union urged comparables.
- (b) That internal comparisons favor the selection of the final offer of the Employer, in that the three voluntary settlements within other bargaining units resulted in 3.5% settlements for 1989; that the Union's demand for a 5% wage increase would be significantly above the voluntary settlements reached for other Village employees.
- (c) That arbitral consideration of the external comparisons urged by the Employer favor the selection of its final offer, rather than that of the Union, that the appropriate wage

comparison data is contained in Employer Exhibit #14, as supplemented by post-hearing brief supplied settlement data involving the cities of DePere and Green Bay.

- (d) That the two year contract term urged by the Employer should be favored by the Arbitrator because it is consistent with the term of the expired agreement, it is consistent with the contract terms for firefighters among comparable employers, and the first year of the renewal agreement (1989) has already gone by, and approximately one-quarter of the second year will have passed by the completion of the arbitration process.
- (e) That the holiday pay provisions in the Employer's final offer will continue the steady improvement since 1987, and will reflect over a twelve percent increase in paid hours during this period.
- (f) That the Employer's sick leave payout program is more liberal than that in six of the seven comparables, since it pays in the event of retirement, termination or death, rather than upon retirement only; for this reason the payouts are less, but the program has improved every year since it was implemented, and it would also be improved under the Employer's offer.

Since the final offer of the Village is favored by arbitral consideration of both external and internal compararisons and is fair and equitable, that it is reasonable to infer that the Village's final offer is one that could well have been adopted by the parties on a voluntary basis.

POSITION OF THE UNION

In support of its contention that the final offer of the Union is the more appropriate of the two offers before the Arbitrator, the Union argued principally as follows:

- (1) That any of the applicable statutory criteria should be applied on an equal basis by the Arbitrator. That neither the lawful authority of the employer, the stipulations of the parties, nor the interest and welfare of the public criteria are in dispute in these proceedings; that arbitral consideration of public and private sector comparisons, the consumer price index, and the overall level of compensation criteria favor the selection of the final offer of the Union.
- (2) That the external comparison criterion when applied to the wage differences in the final offers, favors the selection of the final offer of the Union, in that the Village pays significantly less than the comparable public employers.

- (a) That the Village's offer represents a 33¢ per hour increase in 1989 and a 38¢ per hour increase in 1990, for a two year total of 71¢ per hour.
 - (b) By way of comparison with the above, that DePere firefighters will receive increases of 44¢ and 50¢ per hour over two years, Green Bay firefighters will receive 42¢ and 43¢, and those in Aswaubenon anticipate a 39¢ increase in 1989. Under the Village's final offer, therefore, that the firefighters would fall further behind the wages paid in comparable communities.
 - (c) Even if the data provided in Employer Exhibit #17 is considered, the Village's offer is insufficient; in this connection, that Kaukauna firefighters are receiving 35¢ per hour increases in 1989, and Menasha firefighters are getting a total of 95¢ per hour in increases in 1989 and 1990. That the Two Rivers comparisons should not be applied in these proceedings because the City is not near a metropolitan area, it is a substantially depressed area, and it has an equalized value greatly under that of the other municipalities cited by the parties.
- (3) That arbitral consideration of the sick leave accumulation pay item favors selection of the final offer of the Union.
- (a) That the Village has offered a \$200.00 increase in the payout, while the Association has requested an \$800.00 increase.
 - (b) That all other metropolitan units receive this benefit based upon a conversion rate which involves a maximum accumulation of days paid out at the then existing salary; accordingly, whenever they receive a salary increase, they automatically receive a dollar benefit increase in this area. By way of example, a 4% increase in salary over two years would increase the benefit for the Village of Ashwaubenon by nearly \$1,000, by nearly \$2,000 for the City of Green Bay, and by nearly \$1,000 for the City of DePere.
 - (c) That the comparisons cited in Employer Exhibits #36 through #41 show the Employer's final offer to be deficient. In this connection, that Kaukauna pays 75% of the monthly premium for medical insurance for retirees until age 65; in Menasha over 90 working days can be converted at retirement; in Neenah, that retirees will be eligible for a payout of up to 40 weeks of equivalent pay by 1991, a benefit ten times greater than that offered by the Village of Allouez; and in Two Rivers, employees are paid for up to six days of unused sick leave annually.

On an overall basis, that firefighters anticipate retirement at age 55 or before, and that the cost of medical insurance has a drastic impact upon their ability to make a retirement decision;

that all comparable communities except Allouez have taken this into account and made provisions for such retirees to utilize their conversion rights until Medicare kicks in. In the Village of Allouez, that the benefit is so far behind others that individuals considering retirement are directly affected by the absence of this benefit; that the Village, in effect, requires its firefighters to work beyond the normal retirement age by the lack of an adequate benefit in this area, and that this deficiency alone makes the arbitral selection of the Association's final offer very compelling.

- (4) In the area of holiday pay, that the Village's final offer is deficient as compared to others in the Green Bay metropolitan community.
- (a) That the Village lags behind in gross dollars paid and also lags in the 1989 increase.
 - (b) As shown in Employer Exhibit #23, DePere receives 75% of their monthly base as holiday pay, and will receive an approximate \$80 increase in 1989. That Green Bay will receive nearly a \$100 increase, and Ashwaubenon a \$200 increase. Accordingly, that the Village's final offer would not even maintain a parity with the net increases received by other comparable communities.
 - (c) In looking to communities outside the Green Bay metropolitan area, that Kaukauna's holiday pay benefit totals \$1,480 per year, Menasha pays a benefit equivalent to \$2,166 per year, and Neenah employees receive a benefit equivalent of \$1,357 per year.
 - (d) That the Village of Allouez is at "the bottom of the barrel" in the holiday pay area, and this presents a compelling reason for the adoption of the final offer of the Union.
- (5) That internal comparisons with other Village of Allouez employees supports the adoption of the final offer of the Union.
- (a) That the Village has not settled any other contracts for 1990 and, accordingly, that adoption of the final offer of the Union would put the firefighters on the same timetable as other bargaining units.
 - (b) That under the Village's proposal, firefighters would receive an hourly rate of \$9.75 per hour, some \$1.72 per hour less than the lowest rate in the Parks Department, 80¢ per hour less than the lowest paid Maintenance Worker, and 50¢ per hour below the Cashier/Bookkeeper Classification. Under the Village's proposal, that only clerical workers would make less per hour than firefighters.

- (c) That the Village is very competitive with other municipalities in the hourly rates paid to other employees, but this is not true for firefighters.
- (6) That comparisons with the wages of other public employees supports the adoption of the final offer of the Union.
- (a) In the Green Bay metropolitan community, that the average 1989 increase is 3.9%, and the average 1990 increase is 4.3%, for a two year total of 8.2%.
 - (b) That the Union's one year offer of a 5.0% increase, while higher than comparables, is not so significantly higher as to be shocking.
 - (c) That the Village's offer is substantially lower, and would result in the firefighters losing ground to other municipal employees in the metropolitan community.
- (7) That arbitral consideration of private sector comparisons favors selection of the final offer of the Union.
- (a) That Association Exhibit #8 shows median 1989 increases of 5.0% for service industries in the Green Bay metropolitan community.
 - (b) That the 5% median increase in private enterprise is identical to the request of the Association, and the mean increase of 4.3% is closer to the Association's than to the Village's final offer.
- (8) That arbitral consideration of the consumer price index favors selection of the final offer of the Association.
- (a) During 1988 that consumer prices rose at a rate of 4.4%, a figure closer to the Association's than to the Village's final offer.
 - (b) That the 1989 increase in consumer prices was nearly 5.0%, and the Village offer falls far short of this level.
 - (c) Under the employer's final offer, that the Allouez Firefighters not only would lose ground to their metropolitan co-workers, but they would also lose ground nationally and in relation to the private sector.
 - (d) That the Village offer would depress the relative wage rate received by the Allouez Firefighters, while the Association's final offer more closely attempts to maintain the status quo.
- (9) That comparisons of the overall levels of benefits favor

arbitrary adoption of the final offer of the Association.

- (a) That Association Exhibit #10 compares benefits in the Village of Allouez with other metropolitan units, and shows that those in the bargaining unit lag behind in various non-wage areas.
 - (b) In the above connection, that the disparity is notable in the areas of longevity pay, vacations, clothing allowances, life insurance, medical insurance and paid personal leave days, holiday pay, and accumulated sick leave benefits.
- (10) That various other factors also favor the selection of the final offer of the Association.
- (a) That Association Exhibit #11 shows a dramatic difference in the cost of providing fire services to Allouez residents versus other Green Bay metropolitan communities; that the Village of Allouez is at the bottom of the list, and it can well afford the requested increase of the Association.
 - (b) That Employer Exhibit #8 shows the total difference between the Village and the Union is a matter of \$3,353.96, or 22¢ per resident; that this figure will keep Allouez dramatically below other metropolitan communities for the cost of fire services.
 - (c) That Employer Exhibit #12 shows one firefighter per 1676 residents in Allouez as compared to one per 827 residents in Neenah, one per 816 residents in Kaukauna, and one per 891 residents in Two Rivers. That Allouez works "short-handed" which means that its employees take on significantly more responsibilities, particularly in the area of paramedicine.
 - (d) Pursuant to the above, that Allouez pays its firefighters less and has fewer firefighters than comparable communities, thus providing an embarrassingly low cost of firefighter services.
 - (e) That Employer Exhibit #11 shows that the Village has the ability to pay more for firefighter services. That the equalized value of residential property in Allouez far exceeds on a per resident basis, the comparable communities listed by the Employer. When considered on the basis of the cost of fire protection per \$1,000 of equalized valuation, Allouez is shockingly low; although the Village is a prosperous and affluent suburban community of Green Bay, the residents get by for a ridiculous amount when it comes to fire services.

On the basis of all of the above, that the Association's final

offer is the more reasonable of the two before the Arbitrator. That the Village pays its firefighters less than its contiguous sister communities, that the Association's offer is closer to the general wages paid to comparable firefighters, that the base salary of other Allouez workers is more competitive than that of the firefighters, that general wage increases in the Green Bay area support the Association's offer, and that consumer price index considerations favor the Association's offer. That the position of the Association is particularly favored by consideration of the fact that retirees would only have a one year maximum of medical insurance under even the Association's final offer, which is well below the levels of benefits in comparable communities. That the automatic roll ups received under the final offer of the Village will pay only an approximate 10% of what other communities are paying, and the Village's offer would not match the increases in other communities.

FINDINGS AND CONCLUSIONS

Prior to reaching a decision and rendering an award in these proceedings, the Arbitrator will offer some general observations with respect to the nature of the interest arbitration process and the application of the statutory interest arbitration criteria, after which each of the four impasse items will be separately addressed.

The Nature of the Interest Arbitration Process

At this point the Arbitrator will emphasize that an interest arbitrator operates as an extension of the parties' contract negotiations process, and he or she will normally attempt to place the parties into the same position they would have occupied but for their inability to achieve a complete settlement over the bargaining table. In attempting to arrive at this point, an arbitrator will closely examine such factors as the parties' past agreements, their past practices and their negotiations history, in an attempt to determine which

of the final offers is the more appropriate. These factors fall well within the scope of sub-section (h) of Section 111.77(6), and they are used in conjunction with arbitral application of the remaining statutory criteria. These considerations are rather well described in the following excerpt from the frequently cited book by Elkouri and Elkouri:

"In a similar sense, the function of the 'interest' arbitrator is to supplement the collective bargaining process by doing the bargaining for both parties after they have failed to reach agreement through their own bargaining efforts. Possibly the responsibility of the arbitrator is best understood when viewed in that light. This responsibility and the attitude of humility that appropriately accompanies it have been described by one arbitration board speaking through its chairman, Whitley P. McCoy:

'Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination, upon considerations of policy, fairness, and expediency, of what the contract rights ought to be. In submitting their case to arbitration, the parties have merely extended their negotiations - they have left to this Board to determine what they should by negotiations, have agreed upon. We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men have agreed to?...To repeat, our endeavor will be to decide the issues, as upon the evidence, we think reasonable negotiators, regardless of their social or economic theories might have decided them in the give and take of bargaining..'." 1./

The Application of the Statutory Criteria

While the Legislature has not seen fit to prioritize the various statutory criteria specified in Section 111.77(6), it has been widely recognized in Wisconsin and elsewhere, that the comparison criterion is normally the most important and the most persuasive of the various interest arbitration criteria. Although the parties have submitted and argued the impact of public and private sector comparisons, internal and external comparisons, and firefighter and non-firefighter comparisons, it

1./ Elkouri, Frank and Edna Asper Elkouri, How Arbitration Works, Bureau of National Affairs, Fourth Edition - 1985, pp 104-105. (footnotes omitted)

must next be emphasized that the most persuasive comparisons to an interest arbitrator are those which have been used by the parties themselves in their past negotiations, and the most persuasive of these are normally intraindustry comparisons. These considerations are briefly addressed in the following excerpts from a book by Irving Bernstein:

"a. Intraindustry Comparisons. The intraindustry comparison is more commonly cited than any other form of comparison, or, for that matter, any other criterion. More important, the weight that it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards...." 2./

If there is a dispute as to which of the possible intraindustry comparisons to use, or the relative weight to be placed upon them, interest arbitrators will frequently consider the parties' bargaining (or interest arbitration) history, and they are extremely reluctant to depart from the comparisons used by the parties in the past. These principles and their rationale are described as follows by Bernstein:

"This, once again suggest the force of wage history. Arbitrators are normally under pressure to comply with a standard of comparison evolved by the parties and practiced for years in the face of an effort to remove or create a differential. When Newark Milk Company engineers asked for a higher rate than in New York City, the Arbitrator rejected the claim with these words: 'Where there is, as here, a long history of area rate equalization, only the most compelling reasons can justify a departure from the practice.' "

* * * * *

"The last of the factors related to the worker is wage history. Judged by the behavior of arbitrators, it is the most significant consideration in administering the intraindustry comparison, since the past wage relationship is commonly used to test the validity of other qualifications. The logic of this position is clear: the ultimate purpose of the arbitrator is to fix wages, not to define the industry, change the method of wage payment and so on. If he discovers that the parties have historically based wage changes on just this kind of comparison, there is virtually nothing to dissuade him from doing so again..." 3./

2./ Bernstein, Irving, The Arbitration of Wages, University of California Press, 1954, p. 56.

3./ Ibid, pp. 63, 66.

On the above bases, the Impartial Arbitrator has preliminarily concluded that the comparison criterion is normally the most important of the various interest arbitration criteria and, unless otherwise indicated in the bargaining history of the parties, the intraindustry comparisons are normally the most persuasive of the various possibilities. In the case at hand, the so called intraindustry comparisons would be with other public sector employers employing firefighters, and the most persuasive such comparisons would be with public employers equivalent in size and makeup, and located in the same labor market.

Apart from comparisons, it will be briefly noted that the relative importance of the other statutory criteria will vary greatly with the surrounding circumstances. During periods of high inflation, for example, the cost of living criterion assumes greater importance than is the case when cost of living indexes are relatively stable. Contrary to the argument advanced by the Union, therefore, there is no appropriate basis for applying the statutory criteria on an equal basis.

The Makeup of the Primary Intraindustry Comparison Group in the Dispute at Hand

In this connection the parties are in agreement with respect to the inclusion in the primary comparison group of Ashwaubenon, De Pere, Green Bay and Allouez, and the Employer additionally proposes the inclusion of the Cities of Kaukauna, Menasha, Neenah and Two Rivers. There is nothing in the record to persuasively indicate that the parties in their past negotiations have either included or excluded from consideration, the four municipalities in question; accordingly, the Arbitrator must look to various other considerations to determine what employers should comprise the primary intraindustry comparison group.

- (1) In examining a map of the area it is apparent that the cities of Ashwaubenon, De Pere, Green Bay and Allouez are part of the same metropolitan area or community, while the Cities of

Kaukauna, Menasha and Neenah are part of another metropolitan area located some thirty miles away. Two Rivers is somewhat further away, and is located in reasonably close proximity to the City of Manitowoc.

Certainly geographic proximity alone would indicate that the cities of Kaukauna, Menasha, Neenah and Two Rivers are part of the same labor market which serves the Green Bay metropolitan area, and there is nothing in the record to suggest that this is not the case.

- (2) In looking to the population comparisons contained in Employer Exhibit #10, it is apparent, with Green Bay excluded, that the remaining seven cities average approximately 16,000 in population; this average figure compares closely with the last reported population of 15,084 for Allouez.
- (3) In examining the 1988 Statement of Equalized Values contained in Employer Exhibit #11, and determining the average per capita figure for the residential, commercial, manufacturing and totals categories, the following comparisons are apparent.

<u>Municipality</u>	<u>Residential</u> <u>Per Capita</u>	<u>Commercial</u> <u>Per Capita</u>	<u>Manufacturing</u> <u>Per Capita</u>	<u>Total Per</u> <u>Capita</u>
Ashwaubenon	\$16,601	\$15,604	\$2,732	\$34,938
De Pere	\$16,571	\$5,392	\$1,162	\$23,119
Green Bay	\$14,510	\$6,100	\$1,636	\$22,329
Kaukauna	\$14,324	\$2,285	\$1,940	\$18,595
Menasha	\$16,098	\$3,333	\$3,214	\$22,629
Neenah	\$17,940	\$4,490	\$3,142	\$25,571
Two Rivers	\$12,393	\$2,450	\$1,604	\$16,453
Allouez	\$22,049	\$2,465	\$21	\$24,510

Apart from the fact that it is not part of a metropolitan community similar to the seven other employers, the City of Two Rivers is considerably below the other employers in terms of equalized valuation per capita. Despite the fact that Allouez is significantly higher in the residential category and very low in the commercial and manufacturing categories, its average per capita is quite close to the remaining six employers. Indeed, the average equalized value per capita for the cities of Ashwaubenon, De Pere, Green Bay, Kaukauna, Menasha and Neenah is approximately \$24,530, versus an average of \$24,510 for the Village of Allouez.

On the basis of the above, the Arbitrator has preliminarily concluded that a comparison of equalized valuation and population data for the indicated employers, supports the use of a primary comparison group which includes Ashwaubenon, De Pere, Green Bay, Kaukauna, Menasha, Neenah and Allouez, and which excludes Two Rivers.

- (4) In examining the 1988 Taxes Levied by Municipality as indicated in Employer Exhibit #10, and comparing the employers on a per capita basis, the following figures are meaningful.

<u>Municipality</u>	<u>Taxes Levied Per Capita</u>
Ashwaubenon	\$996
De Pere	\$812
Green Bay	\$743
Kaukauna	\$883
Menasha	\$778
Neenah	\$860
Two Rivers	\$497
Allouez	\$643

Although the average taxes per population does not accurately reflect the tax effort by community, due to the differences in the equalized valuation categories shown above, it is apparent that Two Rivers is lower by far than the remaining employers. With the elimination of Two Rivers, the average for the remaining six employers is \$795 as compared to \$643 for the Village of Allouez. While this is a significant difference it cannot alone be regarded as an indication of a disproportionate tax effort by Allouez, due to the differences in the residential, commercial and manufacturing categories for the various employers, as addressed above.

On the basis of the above, the Arbitrator has preliminarily concluded that a comparison of the taxes levied by municipality supports the use of a primary comparison group including Ashwaubenon, De Pere, Green Bay, Kaukauna, Menasha, Neenah and Allouez. While the latter is approximately \$150 per capita lower in levied taxes than the other six employers, this is at least partially attributable to its high percentage of residential and low percentage of manufacturing property upon which taxes are levied.

On the basis of all of the above, the Impartial Arbitrator has preliminarily concluded that the primary "intraindustry" comparison group should consist of the following employers: Ashwaubenon, De Pere, Green Bay, Allouez, Kaukauna, Menasha and Neenah. The first four of the comparables are agreed upon by the parties, while the latter three should be included due to arbitral consideration of the following considerations: the parties' negotiations history; the geographic proximity of the employers to one another and the fact that they are apparently part of the same labor market; population comparisons; the employers' status as parts of similar metropolitan communities; consideration

of equalized valuation per capita; consideration of average taxes levied per capita.

The Cost of Living Criterion

In this connection the Union submitted that consumer prices had risen by 4.4% in 1988 and 5.0% in 1989, and it urged that arbitral consideration of these figures supported the selection of the Union's, rather than the Employer's final offer. The Employer did not urge major consideration of the cost of living criterion by the Arbitrator.

Cost of living considerations are difficult to apply and to weigh in importance relative to other criteria, for various reasons:

- (1) The weight placed on cost of living considerations over the bargaining table and during interest arbitration proceedings, varies with the state of the economy. During periods of rapidly rising or rapidly decreasing prices, this criterion might be the most important one; during periods of relatively stable prices, however, cost of living considerations decline in their relative importance.
- (2) Movement in the consumer price index normally overstates the actual impact of rising or falling costs upon individual groups of employees, due to the makeup of the market basket of goods and services upon which cost of living changes are measured, and the characteristics of the employee group in question. Housing costs and medical costs, for example, are significant elements in measuring price changes, but they do not accurately reflect increases in out of pocket costs for employees who are not buying and selling homes in the short term, and they do not reflect actual increases in out of pocket costs for employees who enjoy significant employer paid hospitalization and medical insurance coverage.
- (3) Increases in cost of living are already reflected in the application of the comparison criterion, in that settlements between unions and comparable employers in the same labor market were all negotiated under the same economic circumstances, and they already represent and include the weight placed upon cost of living considerations by the negotiators.

In the situation at hand the Employer is proposing wage increases of 3.5% and 4.0% for 1989 and 1990, while the Union is urging a 5.0% increase for 1989. In considering recent and anticipated movement in the CPI in

light of the above factors, the Impartial Arbitrator has preliminarily concluded that the cost of living criterion cannot be assigned significant separate weight in the final offer selection process in these proceedings.

With the above as background, the Arbitrator will next move to consideration of the final offers of the parties, including the specific impasse items contained therein.

The Length of the Renewal Agreement

In this area the Arbitrator is faced with the Union's offer for a one year renewal agreement covering only calendar year 1989, versus the Employer's offer for a two year renewal covering calendar years 1989 and 1990.

There is nothing in the record to suggest that either party caused or intentionally contributed to the delay in the contract renewal for the purpose of deriving a perceived benefit therefrom and, in the absence of compelling reasons, it is hard for an interest arbitrator to justify the selection of a renewal agreement that had already expired at the time of the scheduled hearing. Both public policy considerations and logic would clearly favor arbitral selection of a final offer that would provide the parties with an effective, operative and on-going agreement at the completion of the interest arbitration process, rather than one which would immediately return the parties to the bargaining table to negotiate the renewal of another already expired agreement.

Apart from the general considerations referenced above, it must be noted that the expired agreement covered a two year term, and all of the comparable settlements in both the Green Bay and the Appleton areas were for two or three year contract terms. Accordingly, both the parties' negotiations history and arbitral consideration of comparable firefighter settlements, strongly favor the selection of a two year rather than a

one year contract term in these proceedings. Indeed, there is nothing in the record that would persuasively recommend to the undersigned the selection of the one year term included in the final offer of the Association.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the two year contract term contained in the final offer of the Employer is clearly favored over the one year term urged by the Union.

The Wage Offers of the Parties

In next addressing the merits of the wage increase component of the final offers of the parties, it will again be noted that the Employer offer provides for increases of 3.5% and 4.0% for 1989 and 1990, the two years covered by its final offer, while the Union offer includes a 5.0% increase for 1989, the single year covered by its offer.

In first examining the firefighter wage increases within the primary comparison group, it will be noted that De Pere, Green Bay, Kaukauna, Menasha and Neenah have agreed to weighted average dollar wages increases as follows:

<u>Employer</u>	<u>1989</u>	<u>1990</u>
De Pere	3.3%	NA
Green Bay	3.7% (1/1) .7% (7/1)	3.4% (1/1) .5% (7/1)
Kaukauna	4.0%	Not Settled
Menasha	3.5%	2.0% (1/1) 2.0% (7/1) 2.0% (10/1)
Avg. \$ Incs	<u>3.71%</u>	<u>3.575%</u>

On the basis of the above, it is clear that the Employer's 3.5% wage increase offer for the first year of the renewal agreement is closer to the average dollar costs in the primary comparison group, than is the Union's demand for a 5.0% wage increase. In looking next to the limited settlement data available for 1990 comparison purposes, the Employer's second year proposal of 4.0% seems quite competitive with the Green Bay and the Menasha time weighted average dollar increases of 3.575% for the year. Accordingly, the Impartial Arbitrator

has preliminarily concluded that arbitral selection of the Employer's wage increase proposal is supported by consideration of the increases provided for firefighters within the primary comparison group.

What next of the Union's argument that the Arbitrator should select the final offer of the Union for the purpose of catching-up with other employees in the comparison pool in the area of wages, and to enhance the sick leave accumulation and the holiday pay benefits to a level consistent with certain comparable employers? The Employer, on the other hand, submitted that its wage offer was a competitive one, and it argued that it was offering significant improvement in both the holiday pay and the sick leave accumulation programs; in the latter connection it also distinguished between the nature of the parties' sick leave accumulation program versus that of other employers.

In addressing the wage catch-up arguments of the Union, the Arbitrator has carefully examined the contents of Employer Exhibits #15 and #17, has deleted the Two Rivers data from the comparisons, and has added the wage settlement figures for De Pere for 1989, and Green Bay for 1989 and 1990. This examination has resulted in the following average comparisons between the Village of Allouez and the municipalities of Ashwaubenon, De Pere, Green Bay, Kaukauna, Menasha and Neenah for 1985 through 1990.

<u>Year</u>	<u>Average Firefighter Wages-Comparison Grp.</u>	<u>Average Firefighter Wages - Allouez</u>	<u>Variations</u>
1985	Minimum \$712.00 Maximum \$938.00	Minimum \$672.00 Maximum \$903.00	(-\$40.00) (-\$35.00)
1986	Minimum \$768.00 Maximum \$995.00	Minimum \$721.00 Maximum \$952.00	(-\$47.00) (-\$43.00)
1987	Minimum \$795.00 Maximum \$1030.00	Minimum \$772.00 Maximum \$1003.00	(-\$23.00) (-\$27.00)
1988	Minimum \$826.00 Maximum \$1070.00	Minimum \$824.00 Maximum \$1055.00	(-\$2.00) (-\$15.00)
1989	Minimum \$838.00 Maximum \$1085	Minimum Emp \$852.00 Maximum Emp \$1092	(+\$15.00) (+\$7.00)

<u>Year</u>	<u>Average Firefighter Wages-Comparison Grp.</u>	<u>Average Firefighter Wages - Allouez</u>	<u>Variations</u>
1989 (cont)	Minimum \$838.00 Maximum \$1085.00	Minimum Un \$876.00 Maximum Un \$1107.00	(+\$38.00) (+\$22.00)
1990	Minimum \$825.00 Maximum \$1169.00	Minimum Emp \$887.00 Maximum Emp \$1135.00	(+\$62.00) (-\$34.00)

While the interest arbitration process tends to gradually close wage and benefits disparities between groups of comparable employers whose employees perform comparable work within the same labor market, it must be remembered that it is conclusively presumed that the prior labor negotiations and/or interest arbitration proceedings between the parties have completely disposed of all wage and benefits matters then pending. It is not up to an arbitrator to immediately modify the nature and the types of previously negotiated benefits to create uniformity within a pool of comparable employers, nor to immediately rectify what might be perceived by either party as an advantageous or a disadvantageous historic wage or benefits relationship. Stated another way, when the parties have negotiated wages and benefits which have been comparable to group averages, interest arbitrators tend to continue this pattern; if parties have negotiated patterns of wages and benefit leadership or they have tended toward a somewhat below average pattern, interest arbitrators do not normally find persuasive justification to reverse such a negotiated pattern in a single interest arbitration proceedings.

It is clear that the parties since 1985, have gradually closed the previous wage gap between firefighters bi-weekly wages in Allouez, versus the averages in the primary comparison group. The arbitral adoption of the final offer of the Employer would continue at approximately the parties' historic pace in this process, and would eliminate the wage disparity by 1989, when bi-weekly firefighter wages in Allouez would be \$15.00 above the average at the minimum and \$7.00 above average at the maximum. There is insufficient 1990 wage data upon

which to draw valid conclusions, but it is clear that no persuasive case has been made that the primary comparisons indicate that Allouez Firefighters should progress to the levels indicated in the Union's final wage offer.

Without unnecessary elaboration it will be noted at this point that arbitral consideration of the internal comparisons within the Village of Allouez supports the selection of the Employer's final offer. Such internal comparisons are, however, entitled to much less weight than the external comparisons discussed earlier.

The undersigned will also add at this point that he has considered the private sector comparison data submitted into the record, but has concluded that it is entitled to relatively little weight in these proceedings due to the available firefighter comparisons within the primary comparison group, and the available internal comparison data. These specific comparison data are entitled to much greater weight than the nonspecific private sector settlement averages available in these proceedings.

On the basis of all of the above, the Impartial Arbitrator has preliminarily concluded that the comparison criterion when applied on the basis of the parties' negotiations history, clearly supports arbitral selection of the final wage offer of the Employer.

The Holiday Pay and the Sick Leave Payout Issues

In the area of holiday pay the parties' 1987-88 agreement provided for bargaining unit employees to be compensated for 131 hours in 1987 and 139 hours in 1988, in lieu of additional days off. The Employer proposes that these compensated hours be increased to 143 hours for 1989 and 147 hours in 1990, while the Union proposes that the compensated hours be increased to 155 hours for 1989.

In the area of sick leave accumulation the parties' 1987-88 agreement

provides for accumulated sick leave conversion at retirement, termination or death in the following amounts:

<u>Years of Service</u>	<u>Payment - 1987</u>	<u>Payment - 1988</u>
10	\$600.00	\$800.00
15	\$1000.00	\$1200.00
20	\$1400.00	\$1600.00
25	\$1800.00	\$2000.00

The Employer's final offer proposes to increase the payments for each category by \$400.00, while the Union proposes to increase the benefit as follows:

<u>Years of Service</u>	<u>Payment - 1989</u>
5	\$1200.00
10	\$1600.00
15	\$2000.00
20	\$2400.00
25	\$2800.00

The Employer cited the parties' recent practice of steadily improving the holiday pay mechanism, emphasizing the 12% increase in paid hours between the 1987 and 1990 agreements if the Village's final offer is accepted. It additionally cited the fact that the parties' sick leave payout program includes retirement, termination and death, rather than merely retirement, and emphasized that it has also been improved by the parties every year since adoption, and that it would be appropriately increased under the adoption of its final offer.

The Union has urged comparisons within the Green Bay metropolitan area and has cited a significantly lower level of sick leave accumulation available to an Allouez Firefighter upon retirement than is available to other Green Bay metropolitan area firefighters.

The Union has made an impressive equitable case for an adjustment in the sick leave conversion payouts available to Allouez Firefighter Retirees, but it must be noted that the Union also seeks continuation of a sick leave

conversion plan that is much broader in application and entails a different formula than is provided for in the labor agreements of comparable employers. Additionally, it must be reemphasized that the Union's sick leave and holiday pay proposals are coupled with its demands for a one year agreement, which is inconsistent with the parties' recent negotiations history and with the contract duration among all primary comparables, and for a 5% wage increase in 1989, which would be the highest among comparable employers.

As emphasized above, it is not up to an interest arbitrator to modify the nature and types of previously negotiated benefits to immediately rectify what one party now regards as a disadvantageous situation, but to attempt to arrive at what the parties might have agreed upon had they been able to do so. The parties have negotiated the sick leave payout and the holiday pay benefits, and the Employer's final offer would continue their recent pattern of gradual improvement in these benefits.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that while the Union has made some persuasive arguments for improvements in these benefits, with particular reference to the amount of sick leave accumulation for retirees, when its offer is considered in its entirety and in light of the parties' recent negotiations history, a persuasive case has not been made for the arbitral adoption of its sick leave accumulation and holiday pay proposals.

Summary of Preliminary Conclusions

As addressed in more comprehensive detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions:

- (1) An interest arbitrator operates as an extension of the parties' contract negotiations, and will normally attempt to place the parties into the same position they would have occupied, but for their inability to reach agreement over the bargaining table. In attempting to arrive at this point, the arbitrator will closely examine such factors as the parties past agreements,

their past practices, and their negotiations history, in addition to the various specific statutory criteria.

- (2) While the legislature had not seen fit to prioritize the various statutory criteria contained in Section 111.77(6), it has been widely recognized in Wisconsin and elsewhere that the comparison criterion is normally the most important, and that the most persuasive comparisons are intraindustry comparisons, particularly those previously used by the parties in their past negotiations.
- (3) The primary "intraindustry" comparison group in the dispute at hand should consist of the following employers: Ashwaubenon, De Pere, Green Bay, Allouez, Kaukauna, Menasha and Neenah.
- (4) The cost of living criterion cannot be assigned significant separate weight in these proceedings.
- (5) The two year contract term included in the Employer's final offer is clearly favored over the one year term urged by the Union.
- (6) The wage offer of the Employer is favored by arbitral consideration of the wage increases provided for within the primary comparison group. There is no persuasive basis for concluding that the selection of the Union's wage offer is indicated by the need to catch-up to other employers in the primary comparison group. Arbitral consideration of internal comparisons favors the selection of the Employer's final wage offer. Private sector comparisons cannot be assigned significant weight in these proceedings.
- (7) While the Union has made some persuasive equitable arguments in the areas of holiday pay and sick leave accumulation, the Employer's position is favored when the two offers are considered in their entirety, and when the parties' recent negotiations history is taken into consideration by the Arbitrator.

At this point the Arbitrator will add by way of dicta that such considerations as the relative staffing levels for firefighters in the various communities, and the relative amounts spent per capita on fire-fighting are neither identified as statutory criteria in Section 111.77(6), nor are they items normally accorded any significant weight in interest arbitration in the public sector. If varying levels of staffing create significant, identifiable and measurable differences in relative workloads for employees, this could well justify different levels of compensation. Such elements must be reflected in evidence in the record, however, rather than in mere argument based upon relative spending or staffing levels in

general.

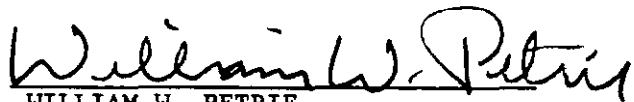
Selection of Final Offer

Based upon a careful consideration of the entire record in these proceedings and a review of all of the statutory criteria, the Impartial Arbitrator has preliminarily concluded that the final offer of the Employer is the more appropriate of the two final offers.

AWARD

Based upon a careful consideration of all of the evidence and arguments, and a review of all of the various arbitral criteria provided in Section 111.77(6) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

- (1) The final offer of the Village of Allouez is the more appropriate of the two final offers before the Arbitrator.
- (2) Accordingly, the final offer of the Village, hereby incorporated by reference into this award, is ordered implemented by the parties.



WILLIAM W. PETRIE
Impartial Arbitrator

April 11, 1990