

EDWARD B. KRINSKY, ARBITRATOR

In the Matter of the Petition of :
 :
Rice Lake Professional Fire Fighters :
Association, Local 1793 : Case 64 No. 58530 MIA-2316
 : Decision No. 30027-A
 :
For Final and Binding Arbitration Involving:
Fire Fighter Personnel in the Employ of :
 :
City of Rice Lake :

Appearances: Mr. Patrick Kilbane IAFF State Representative, for the Association

Weld, Riley, Prenn & Ricci by Mr. Richard J. Ricci, for the City

By its Order of January 26, 2001, the Wisconsin Employment Relations Commission appointed Edward B. Krinsky as arbitrator "to issue a final and binding award, pursuant to Sec. 111.77 (4)(b) of the Municipal Employment Relations Act."

A hearing was held at Rice Lake, Wisconsin on April 12, 2001. No transcript of the proceeding was made. The parties had the opportunity to present evidence, testimony and arguments. The record was completed with the receipt by the arbitrator of the parties' briefs on June 4, 2001.

The parties' most recent Agreement is the one for 1997-99. Their dispute in this matter is over the terms of a new Agreement for 2000 and 2001. The parties' final offers are as follows:

Association Final Offer

"In addition to the continuance of the terms and conditions of [the 1997-1999 Agreement and its appendices]...the following revisions and additions constitute the Final Offer of Local 1793. All provisions except as noted shall be retroactive to January 1, 2000.

1. Contract duration to reflect a two (2) year contract beginning January 1, 2000 through December 31, 2001.

2. Effective January 1, 2000 a 2% base wage increase across the board. Effective July 1, 2000 a 2% base wage increase across the board.

3. 3% Base wage increase across the board for year 2001, effective January 1, 2001.

4. \$ 150.00 premium pay for the added duties of Certified HAZARDOUS MATERIALS TECHNICIANS. This is to be paid in an annual payment on September 1st, starting with the year 2001, for each member of the bargaining unit.

5. All attached Tentative Agreements that were previously signed and agreed to.”

City Final Offer

Ø Except as stated in this Final Offer and as modified by the Tentative Agreements of the parties, the terms and conditions of the Agreement for 1997-99 shall be the terms and conditions of a 2000-2001 successor Agreement.

1. ARTICLE XXVI - EFFECTIVE DATE AND CHANGES

Change term of contract from January 1, 1997 - December 31, 1999 to January 1, 2000-December 31, 2001.

2. ARTICLE XXVII - SUBSTANCE ABUSE POLICY

Delete last sentence relative to one-time \$ 200 settlement bonus.

3. APPENDIX A

Wages

Increase all wages 3% across the board effective 1/1/2000

Increase all wages 3% across the board effective 1/1/2001.

Delete reference to one-time \$ 200 settlement bonus paid in 1997.

APPENDIX B - On-Scene Safety

Change Ø1997-1999Ó to Ø2000-2001Ó Ø

Facts and Discussion:

The parties agreed at the hearing that there are just two items in dispute: wages, and additional pay for Hazardous Materials Technicians.

In their application of the statutory criteria which the arbitrator must weigh, the parties disagree about which municipalities are appropriate comparables. Each of the comparables used by the parties has a fire fighter bargaining unit represented by the International Association of Fire Fighters. Both parties use as comparables the following cities: Antigo, Ashland, Chippewa Falls, Menomonie, Merrill and Rhinelander.

The Association's comparables include the following additional cities: Marshfield, Portage, Superior and Wisconsin Rapids.

The Association contends that all ten of the aforementioned cities were used by the parties during the negotiations which resulted in the current dispute. Union President Cich testified that the parties have used these comparisons in negotiations for the past five or six years. The Association argues, "the question of whether or not the parties were using appropriate comparable cities was never raised during the negotiation process and should not have been an issue for the arbitrator to decide in this case. The Union believes that the use of one list of cities during ...negotiations and...a different list for arbitration purposes, by the Employer, is misleading and unfair."

The City acknowledges that during negotiations for 1997-99 it generated a document of fire fighter 1995-97 wage rates for nine of the ten cities which the Association now urges be viewed as comparables. The City argues, "the Union cannot ascribe 'agreement' on the part of the City to a certain set of comparables simply because the City has been willing to look at various informational sources during past negotiations." The City acknowledges that it made no objections to the Association's use of the list of cities during the most recent negotiations, prior to mediation. It cites the testimony of City Administrator Snyder that the City did not submit a formal list of comparables until the mediation stage of negotiations. It argues, "At that point, the City offered a set of comparables that were, in the City's view, more in line with Rice Lake's population, economy and geographical labor market." It argues further, "the City's willingness to look at compensation data from various cities should not be equated with *agreement* to establish those same cities as comparables for purposes of an interest arbitration hearing. If it were, it would have a chilling effect on the exchange of information that typically occurs during negotiations because both parties would be hesitant to review anything but a narrow range of data for fear it might tie them to a set of comparables that does not meet the standard tests of comparability."

The City relies on a 1973 interest arbitration between these same parties in which Arbitrator Mueller established as comparables the cities of: Antigo, Ashland, Marinette, Menomonie, Merrill and Rhinelander. The City's comparables in the present dispute are the same except that it has substituted Chippewa Falls for Marinette. The City opted for Chippewa Falls, which it notes is used also by the Association, because it is "much more geographically proximate" to Rice Lake than is Marinette.

In its arguments for inclusion of Marshfield, Superior and Wisconsin Rapids, the Association notes that Marshfield and Superior, like the City's comparables, are within 130 miles of Rice Lake, and Wisconsin Rapids is 2 miles further away. The Association argues that these cities are also comparable to Rice Lake based on the size of the population which they serve. It argues that Rice Lake's population is just over 8,000, but its fire department serves "a resident population of approximately 13,000." The Association acknowledges that the full value of property is larger in the cities which are larger than Rice Lake, but argues that if a comparison is made of the full value per resident, Marshfield, Superior and Wisconsin Rapids are appropriate comparisons, and

perhaps even better ones than some of those which the parties agree are appropriate comparisons. The Association argues that the same conclusion is warranted if the property tax collected per thousand dollars of property value is used as the measure. It argues, "of the three cities that the Employer does not want used for comparison, two of them compare more closely to...Rice Lake than do four of the cities the Employer does want used for comparison." The Association also views its comparables as appropriate when an analysis is made of "adjusted gross income per household for the county in which each city is located."

The City argues that the Association has provided no rationale for the inclusion of Portage as a comparable. Portage is some 80 miles beyond the 130 mile radius of the City's other comparables. The arbitrator notes that the Association's reason for including Portage is that it was one of the cities about which the City provided information in negotiations. The Association offers no other rationale for its inclusion. The City notes also that both parties have not used Marinette as a comparable. Marinette is approximately the same distance from Rice Lake as is Portage. In the City's view, this reflects the recognition by both parties that distance is a relevant factor, and the City argues that Portage should be excluded on that basis.

The City objects to the inclusion of Marshfield, Superior and Wisconsin Rapids based on their large populations which are more than twice the size of Rice Lake, in the cases of Marshfield and Wisconsin Rapids, and more than three times its size in the case of Superior. The City objects to their inclusion also using the measures of full value, total property tax, and adjusted gross income. The City notes also that in the five arbitration cases which the City has been involved in since 1973 (two with fire fighters; three with police), the arbitrators have never used Marshfield, Superior and Wisconsin Rapids as comparables.

The arbitrator will use as primary comparables the six cities which both parties agree are comparables. It is reasonable to use these cities also because their use is consistent with the 1973 Mueller award between these parties, notwithstanding the passage of almost 30 years since its issuance. The one substitution from Mueller's list is the inclusion of Chippewa Falls, which both parties agree is comparable, and the exclusion of Marinette, which neither party argues is comparable. The arbitrator will exclude Portage as a comparable, both because of its distance from Rice Lake, and because neither party argues for its inclusion except to the extent that the Association notes that it was referred to in negotiations.

What of Marshfield, Superior and Wisconsin Rapids, cities which are much larger than Rice Lake? As indicated above, the City objects to their inclusion because they are much larger than Rice Lake and the other comparables. The Association argues persuasively that they should be viewed as comparables because the parties used data from those cities during their negotiations, although apparently they never had an agreement that they were appropriate comparables for purposes of arbitration, and the City did object to their use during mediation. If the City did not view these as appropriate comparables, the arbitrator finds it hard to understand why the City

generated and used information about them in negotiations without ever suggesting to the Association that they were not appropriate and would not be accepted as comparables in any subsequent arbitration. The arbitrator notes that the City has been through interest arbitration five times and it surely knows the importance of comparability in that process. These arguments notwithstanding, the arbitrator will analyze the parties arguments and data further before reaching a conclusion about the appropriateness of viewing these cities as comparables.

-With respect to population, the median of the six comparables is 9592, and Rice Lake's population is 8258. Wisconsin Rapids' population is 18,989; Marshfield's is 19,969; Superior's is 27,294.

-With respect to adjusted gross income per household in the county in which each city is located, the median of the six comparables is \$ 31,307. Rice Lake's figure is \$ 29,838. Superior's figure is \$ 29,277; Marshfield's and Wisconsin Rapids' figures are almost \$36,000.

-With respect to full value, and property tax, the figures for Marshfield, Superior and Wisconsin Rapids are at least two times the figures for the median of the six comparables.

These measures provide support for the City's argument that Marshfield, Superior and Wisconsin Rapids are not appropriate comparables. The Association argues that because Marshfield, Superior and Wisconsin Rapids are bigger than the six comparables, their full value and property tax figures would be expected to be bigger also. It argues that these figures should be compared on a per capita basis.

-The median full value per person among the six comparables is \$ 30,518. For Rice Lake the figure is \$ 39,539. For Marshfield it is \$ 33,912. For Superior it is \$ 30,995. For Wisconsin Rapids it is \$ 38,667

-The median property tax per person for the six comparables is \$ 984 and for Rice Lake it is \$ 995. For Marshfield, it is \$ 922. For Superior it is \$ 825. For Wisconsin Rapids, it is \$1162.

Given the facts that Marshfield, Superior and Wisconsin Rapids are within the geographical radius of the six comparables, the parties used them in their negotiations, and some of the economic measures make them comparable to Rice Lake and the six comparables, the arbitrator has decided that they may be used as secondary comparables for the analysis which follows.

The statute requires the arbitrator to give weight to the factors listed there. The parties are not in dispute with respect to some of them: a) lawful authority of the employer; b) stipulations of the parties; that portion of c) which pertains to the financial ability of the unit of government to meet the costs; (e) cost-of-living; (f) overall compensation; g)

changes in circumstances during the pendency of the arbitration. The arbitrator will consider the remaining factors below.

Factor (c) requires the arbitrator to give weight to the interests and welfare of the public. The City cites figures, based on a news article of a report by the Wisconsin Taxpayers Alliance, which indicate that its fire protection costs are higher than in many comparable cities, and higher than the statewide median for cities of the size of Rice Lake. The arbitrator does not give weight to this evidence. It is a news article, not the report itself, and the article states that the findings “are based on unaudited reports submitted by cities to the Wisconsin Department of Revenue...[and] there may be differences in how municipalities report information and that spending differences between municipalities can vary greatly because of many factors.”

The City also cites, among other evidence, a news article which reports on statistics from the Wisconsin Department of Workforce Development indicating that: Barron County (in which Rice Lake is located) is losing jobs, and has per capita personal income significantly below the State median, and has lagged behind the growth rate of the rest of the state. The City concludes, “the Union’s higher wage demand finds little support on the criterion of interest and welfare of the public.”

The Association takes issue with the City’s arguments, and among other things cites the City’s low tax rate and its spending on “new commercial and residential development, including a new city hall building.” It concludes that “the city is vibrant and does not fit the dismal picture portrayed by the article headlines [cited by the City].”

The arbitrator notes the costing information supplied by the City. The total cost of the Association’s final offer for 2000 exceeds the City’s final offer by a total of \$ 69, a negligible difference. The impact of the final offers is greater in 2001 where the cost of the Association’s final offer exceeds the City’s by \$ 5167. The cost differences between these final offers is not so substantial as to impact the public to a degree to make the “interests and welfare of the public” a significant factor in this dispute. The arbitrator, therefore, does not support one final offer over the other based on this criterion.

Factor (d) requires that the arbitrator give weight to comparisons with “...other employees performing similar services and with other employees generally: 1. In public employment in comparable communities; 2. In private employment in comparable communities.” The parties did not present data with respect to private employment, and thus the following analysis is confined to the public sector.

With respect to internal comparability for 2000, the only year in which wages are in dispute, the bargaining units in Rice Lake representing employees in streets, electric utility and water utility, as well as the non-union employees, received a wage increase of 3%, which is what the City is offering to the fire fighters in this dispute. The police bargaining unit received 2% on January 1st, and an additional 2% on July 1st, which is the increase which the Association is seeking in this dispute.

The Association argues that the only appropriate internal comparison for fire fighters is the police unit. It argues that, unlike other employees, police and fire employees are protective service employees, with similar ranks structure, and with schedules which provide service 24 hours per day, 7 days a week.

The City argues for consideration of all of the internal bargaining units. It argues that there has not been parity between police and fire fighter wages in Rice Lake. The City put into evidence wage settlements for all of the bargaining units, beginning in 1988. While police and fire fighters have received the same increases in some of those years, their wage increases have been different in many others.

The City argues that the proposed increase to fire fighters is the same as the one given to bargaining units other than police. It argues also that there are reasons why it has given more to police in 2000 than it has offered to fire fighters.

The City argues that it gave the police a larger wage increase because of concessions made by the police in other areas of bargaining which were important to the City. Snyder testified that the offer of the extra 1% in July was tied to agreement on the four changes which the City was seeking. According to Snyder the City requested that the fire fighters agree to two of these four changes, but the Association was unwilling to make them. The City argues, "the only items which the [Association] did agree to change were items that represented improvements to the employees."

The Association argues that the City has not adequately supported its argument about why the police received a larger offer. It argues, "there is no written agreement to support ...Snyder's statements and there were no police association members present at the hearing to back...Snyder's claims."

A majority of the other unionized bargaining units (3 of 4) in Rice Lake have settled for the City's 3% offer. The fact that the police unit has received a higher wage percentage for 2000 does not affect the conclusion that the internal pattern favors the City's final offer. There is not uniformity, but there is a pattern. The Association's argument that it should be treated in the same manner as police is not persuasive, given the lack of any history of wage increase parity between police and fire fighter units.

Much of the Association's presentation is directed at showing the similarities between positions in the police and fire departments, and the inequity in pay for same, with the wages of fire fighters lagging behind significantly. Thus, for example, it argues that in 1999, "depending upon the position or rank held, Fire Department employees are from 6.42% to 9.63% behind the Police Department employees in wage compensation." It argues that under both final offers, that disparity will widen, with the difference being from 6.98% to 13.07% if the Association's final offer is implemented, and from 8.06% to 14.21% if the City's final offer is implemented. If the Association's pay for hazardous materials technicians is factored in, then in 2001 fire fighter pay still will be lower than

police pay, by 6.54% to 12.5% under the Association's final offer, or from 8.08% to 14.10% under the City's final offer.

As previously mentioned, there is no demonstration that police-fire parity has existed in Rice Lake with respect to annual percentage increases. There is also no evidence that the parties have mutually accepted the sort of position comparison between the two bargaining units which the Association argues should be made. There is also nothing in the record to suggest that differences in pay between specific police and fire ranks is a new development. The Association did not present historical data to show what the relationship has been between the salaries paid to the various ranks. These differences may have existed for years and continued through numerous rounds of voluntary bargaining. The arbitrator cannot determine this from the evidence presented.

Given this history, there is no basis for the arbitrator to decide that the Association's final offer should be favored over the City's simply because it would result in a narrowing of the gap with police. The City's final offer is more in line with the pattern given to the other internal bargaining units. Also, the City has explained the basis for its larger offer to the police. While the Association is correct that the City did not produce documentation in support of Snyder's testimony, the arbitrator has no reason to doubt Snyder's assertion that the City's position in bargaining with the police was conditioned on the making of concessions in other areas by the police unit.

With respect to the external comparables, fire fighter settlements among the six external comparables have not established a pattern for 2000. Ashland and Chippewa Falls settled for 3%, (the City's final offer in the current dispute). Merrill settled for 2% on 1/1 and 2% on 7/1 (the Association's final offer in the current dispute). Rhinelander settled for 4.7%. The settlement in Antigo was 3.25% as a result of an arbitrator's award.

In 1999, Rice Lake ranked 4th in salary among the seven cities (Rice Lake + six comparables) for Fire Fighter and Motor Pump Operator, and 5th for Fire Lieutenant; In 2000, these relationships will continue under either party's final offer. As mentioned previously, the parties agree on the 2001 wage increase.

Among the secondary comparables, the Wisconsin Rapids settlement for 2000 was 3%. The Marshfield settlement was 3% plus \$ 290 on the last day of the year. The Superior settlement was 2.5% plus an additional 1% at step 5.

The Association's data show that for 1999, using top Fire Fighter rates, Rice Lake ranked 4th out of 7 using the primary comparables. The Rice Lake annual wage was \$ 729 below the median. If the secondary comparables are included in the analysis, Rice Lake ranks 7th out of 10 and its annual wage is \$ 2683 behind the median. These figures suggest the need for wage improvement in the relative position of the bargaining unit. However, these figures are of limited usefulness in this proceeding because similar data are not presented for prior years. The arbitrator has no way of knowing whether the relationship of Rice Lake's wage to the wages of the comparables has

changed, or whether Rice Lake's placement is representative of what it has been for many years, reflecting voluntary bargaining outcomes during those years.

With respect to external comparables in non-fire fighter occupations, seven units of employees in Barron County received 3% increases for 2000, as did custodians in the Rice Lake School District. Other employees in the School District received increases as follows: teachers, 2.42% per cell, 3.8% total package; secretaries/aides 3.30%; food service 35 ¢. The arbitrator does not view the external comparables as clearly favoring one final offer over the other.

The second issue in dispute is additional pay for hazardous materials technicians. The Association is seeking \$ 150 apiece annually, beginning September 1, 2001. This is an economic item which, if granted, would increase the annual compensation of all members of the bargaining unit who have completed one year of employment, since they must have hazardous materials certification prior to the completion of their first year. There is no evidence that granting this benefit would impose a financial hardship to the City, or would result in Rice Lake's fire fighters having annual pay which is out of line with what is received in comparable units. However, because additional pay for hazard materials technicians is a separate benefit, it is appropriate that an analysis be made to consider whether such a benefit is given to comparable bargaining units.

Among the six external comparables used by both parties, none provide such pay. Among the secondary comparables, Marshfield, Superior and Wisconsin Rapids all provide some form of compensation for responding to hazardous incidents:

- In Marshfield the language of the Agreement says: "Effective January 1, 1999, \$ 50.00 per incident shall be paid to each member responding to the site of an incident determined by the Chief to be a hazardous materials incident...."
- In Superior the language of the Agreement says: "Specialist Assignments...(1) Hazardous Materials Coordinator...[is] paid at Range C of the Fire Captain or Range C of the Motor Pump Operator..."
- In Wisconsin Rapids, the language of the Agreement says: "Hazardous Material Pay: Firefighters who respond to the scene of a declared hazardous material incident and who are trained to the technician level shall receive a premium of \$ 50.00 per incident, per day. The premium shall be \$ 60.00 effective January 1, 1998 and \$ 70.00 effective January 1, 1999. A day shall start and end at 7:00 a.m. The Fire Chief shall determine an "incident"."

The City notes that at present employees are paid for their hazardous materials certification; *i.e.* they receive 1% over the base wage rate for having an HMT certification. The City argues, "The Union's proposal would provide employees with an *additional* premium payment of \$ 150 / year for HMT certification, regardless of whether or not they are ever actually called upon to respond to hazardous materials spills..."

Even if the arbitrator were to count the secondary comparables as full comparables, the result would be that only 3 of 9 comparables have additional pay for employees who respond to hazardous material incidents, and none of those comparables have the specific benefit sought by the Association. Thus, in the external comparables there is no pattern which justifies an award to the Association of this benefit. This is a benefit which the Association must achieve through bargaining, not arbitration, since it is not a benefit which is common among the comparables. Based on the comparables, the City's final offer is preferred with respect to hazardous materials pay.

Factor (h) requires the arbitrator to give weight to other factors which are normally or traditionally taken into consideration in arbitration. The City argues that arbitrators do not favor changes in the *status quo* with respect to new proposals, where the moving party has not demonstrated a need for same and offered a *quid pro quo*. It argues that the Association has not shown the need for a change in the *status quo* "to add *another* premium pay provision for hazardous materials technician duties on top of the existing premium pay provision," and it has not offered a *quid pro quo*. There is no need for the arbitrator to focus on this aspect of the City's arguments, since in his earlier discussion he has concluded that the Association has not provided adequate justification for its demand for additional hazardous materials pay, based on the comparables.

The statute requires the arbitrator to implement the final offer of one party or the other, in its entirety. The wage offers of both parties are reasonable ones. However, there is greater support for the City's final offer in relationship to internal comparables, and there is more justification provided for the City's offer with respect to the issue of hazardous materials pay.

Based on the above facts and discussion, the arbitrator hereby makes the following AWARD:

The final offer of the City is selected.

Dated this 13th day of June, 2001 at Madison, Wisconsin

Edward B. Krinsky
Arbitrator