

BEFORE THE ARBITRATOR

ROSE MARIE BARON

In the Matter of the Petition of

Professional Firefighters of Mount Pleasant,
IAFF, Local 2939, AFL-CIO

and

Town of Mount Pleasant

Case #16, No 60656, MIA-2431
Decision No. 30460-A

APPEARANCES

John B. Kiel, Esq., The Law Offices of John B. Kiel, appearing on behalf of the Union,
the Professional Firefighters of Mount Pleasant.

Robert W. Mulcahy, Michael Best & Friedrich, LLP, appearing on behalf of the Employer,
the Town of Mount Pleasant.

I. BACKGROUND

The Town of Mount Pleasant is a municipal employer (hereinafter referred to as the "Town" or the "Employer"). The Professional Firefighters of Mount Pleasant (the "Union") is the exclusive bargaining representative of certain Town employees, i.e., a unit consisting of all firefighter personnel in the employ of the Employer. The Town and the Union have been parties to a collective bargaining agreement which expired on December 31, 2001. The parties entered into negotiations, however, no accord was reached and on December 18, 2001, the Union filed a petition requesting the Wisconsin Employment Relations Commission to initiate binding arbitration pursuant to Sec. 111.77(3) of the Municipal Employment Relations Act. Following an investigation and declaration of impasse, the Commission, on September 10,

2002, issued an order of arbitration. The undersigned was selected by the parties from a panel submitted by the Commission and received the order of appointment dated September 26, 2002. Hearing in this matter was held on December 10, 2002 and January 17, 2003 at the Mount Pleasant Town Hall, Mount Pleasant, Wisconsin. A record of the two-day hearing was made by court reporters and transcripts of the proceedings were provided. The parties had the opportunity to introduce documentary evidence and the sworn testimony of witness was taken.

Briefs and reply briefs were submitted by the parties according to an agreed-upon schedule. The record was closed on April 8, 2003.

II. ISSUES AND FINAL OFFERS

The Final offers of the parties are attached to this award and are designated Appendix A (Employer) and Appendix B (Union). A summary of the issues before the arbitrator are as follows:

Duration of the collective bargaining agreement: The Union proposes a two-year contract (January 1, 2002 through December 31, 2003). The Town proposes a one-year contract (January 1, 2002 to December 31, 2002).

Wages: The Union proposes an across-the-board wage increase of 2% effective January 1, 2002, an additional 2% effective July 1, 2002, and additional 2% effective January 1, 2003, and an additional 2% effective July 1, 2003). The Town's offer proposes effective January 1, 2002, 3% across the board.

Workers' Compensation: The Union proposes to replace Article XXX with four new sections which, inter alia, would provide employees injured while performing their jobs with compensation in addition to workers' compensation in an amount to equal 100% of employees' regular after-tax base pay. The Town proposes to retain the present workers' compensation language, i.e., the status quo.

Holidays: The Union proposes to add two holidays (24 hours each) as extra pay or time

of in lieu of pay with certain limitations. The Town proposes the status quo with respect to holidays.

Vacations: The Union proposes changes in the vacation provision to allow, inter alia, five-day blocks instead of two or three day blocks to be selected. The Town proposes the status quo.

III. STATUTORY CRITERIA

The parties have not established a procedure for resolving an impasse over terms of a collective bargaining agreement and have agreed to binding interest arbitration pursuant to Section 111.77(4)(b), Wis. Stats. In determining which final offer to accept, the arbitrator is to consider the factors enumerated in Employment Relations, Sec. 111.77 (updated 01-02 Wis. Stats. Database):

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

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally:
 - 1. In public employment in comparable communities.
 - 2. In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of

the arbitration proceedings.

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

IV. POSITIONS OF THE PARTIES

The following statement of the parties' positions does not purport to be a complete representation of the arguments set forth in their extensive briefs and reply briefs which were carefully considered by the arbitrator. What follows is a summary of these materials and the arbitrator's analysis in light of the statutory factors noted above. Because the selection of the appropriate communities for purposes of comparability will have a major impact on the selection of one of the parties' final offers, that matter will be addressed first.

A. The Comparables

1. External comparables: At hearing the parties introduced the comparable community data for firefighters' bargaining units. The Union proposed seven communities, the Employer nine, as shown below:

<u>Union</u>	<u>Employer</u>
Caledonia	Caledonia
Cudahy	Cudahy
Franklin	Franklin
Greendale	Greendale
Greenfield	Greenfield
Oak Creek	Oak Creek
-----	Pleasant Prairie
-----	St. Francis
South Milwaukee	South Milwaukee

a. Argument of the Union

The Union contends that the comparable pool utilized in collective bargaining between the parties should be preserved. On April 30, 2002, the Union submitted a base wage comparison for 10-year firefighters to Kevin O'Donnell, Town Administrator, which set forth the

seven communities shown above and the wage rates for 2000, 2001, and 2002. For those communities where settlement had not been reached, a 3% increase in each year was assumed (Union Ex. 905).

On May 30, 2002, Counsel for the Union forwarded to the Union President a document which the Town had provided comparing municipality “capped out” wages for the firefighter classification in six municipalities: Cudahy, Franklin, Greendale, Oak Creek, Greenfield, and Caledonia (Union Ex. 906).¹

The Union claims that although the Town disputed the Union’s wage calculations, it did not dispute the Union’s comparables. Therefore, it is argued that the Town’s addition of Pleasant Prairie and St. Francis to the list of comparables at hearing amounts to “comparable shopping” in order to support its position. The Union challenges the inclusion of these two communities, while excluding Racine and Kenosha which are geographically more proximate to the Town of Mount Pleasant. The arbitrator is urged to respect the choices made by the parties in negotiations leading up to the hearing.

An important consideration is that of the provision in Sec. 111.77(6)(c) Stats., the “Interests and Welfare of the Public.” The Town of Mount Pleasant and the Town of Caledonia firefighters share and staff jointly a fire stations. Thus it is argued that the Mount Pleasant public has an interest in the maintenance of a comparable pool that will minimize discrepancies between these two groups in order to preserve workplace harmony.

The Union relies on an interest arbitration involving firefighters in the town of Caledonia, with whom the Mount Pleasant Firefighters are most closely related in support of its comparability pool. In this case Arbitrator Sherwood Malamud ultimately adopted a comparability pool consisting of Cudahy, Franklin, Greendale, Greenfield, Oak Creek, South

¹Note: Contrary to the Union’s assertion in its Brief, at page 7, South Milwaukee, one of the Union’s seven comparables, is not included in the Town’s list of municipalities in Union Ex. 906..

Milwaukee, and Town of Mount Pleasant (*Town of Caledonia Fire Department*) Decision No. 29551-A (10/11/99).

In its reply brief, the Union cites Employer Ex. 3, Town of Mt. Pleasant -- AFSCME Negotiations to show that Pleasant Prairie was not included in the list of comparables.²

b. Argument of the Town

The Town agrees with the Union on the seven external comparables cited above, however, it proposes the addition of Pleasant Prairie and St. Francis. It is argued that when three factors, i.e., geographic proximity, similar economic conditions, and similar size, are applied, Pleasant Prairie and St. Francis must be included.

Pleasant Prairie is approximately 12 miles south of Mt. Pleasant; St. Francis is approximately 17 miles to the north (see, e.g., Employer Ex. 20). The Town asserts that not only are Mount Pleasant and Pleasant Prairie geographically proximate, but they share similar size and economic conditions, e.g., Mt. Pleasant's population is 23,142 v. Pleasant Prairie's 16,136 (Pleasant Prairie is larger than Greendale). Mt. Pleasant's equalized value is \$1,738,188,700 compared to Pleasant Prairie at \$1,565,427,500 (Employer Ex. 19).

It is contended that St. Francis, although smaller and a less wealthy community than Mount Pleasant, is still close enough in size and wealth to be included as a comparable community.

The Employer contends that Mount Pleasant ranks fifth in population and fourth in equalized value of its comparables and falls generally in the "middle of the pack."

c. The Arbitrator's Decision

Inspection of the record confirms the Employer's assertion that there was no agreement on the appropriate comparables during negotiations. Although the Union claims that

²Employer Ex. 3, page 2 shows the inclusion of St. Francis as one of the comparables for the clerical unit negotiations.

the parties considered certain comparable data during collective bargaining, that is insufficient to bar the Employer from proposing a different set of communities in arbitration. For example, the arbitrator has found inconsistencies in certain materials drafted by the Union and sent to the Employer. Union Ex. 905 contains base wage comparisons for the 10-year firefighter classification which list the seven communities which the Union relies upon in arbitration. However, Union Ex. 907 which was given by the Union to the Town negotiating team on October 10, 2001 consists of comparisons of wages and holidays for only five communities, i.e., Franklin, Greendale, Greenfield, Oak Creek, and South Milwaukee. Caledonia and Cudahy are not included. Further the comparison of “capped out” wages provided by the Town includes Caledonia, Cudahy, Franklin, Greendale, and Oak Creek but provides no data for South Milwaukee (Union Ex. 906).

The arbitrator has carefully reviewed the Town’s position that St. Francis and Pleasant Prairie are appropriate as external comparables. Inspection of Employer Ex. 19 makes it exceedingly clear that St. Francis, while it may be geographically proximate, falls so far below the other communities in population, equalized value, and size of the fire department, that it cannot be considered comparable. Utilizing the data provided by the Employer, the arbitrator has relied on the median as the measure of the average (the fifth of nine communities) to compare St. Francis and Town of Mount Pleasant:

	<u>Population</u>	<u>Equalized Value</u>	<u>Fire Department size (Full time only)</u>
Median	21,256	\$1,484,597,400	30
St. Francis	8,662	420,572,300	13
Mount Pleasant	23,142	1,738,188,700	47

It does not require a sophisticated statistical analysis of this table to see that St. Francis is not close enough in population, full-time employees in the fire department, or equalized value

to either the median or to Mount Pleasant to be included as a comparable community. Its rank of ninth of the nine comparables in each of the three categories does not make it an appropriate comparable in this interest arbitration.

The situation regarding Pleasant Prairie is somewhat different. A similar analysis yields the following:

	<u>Population</u>	<u>Equalized Value</u>	<u>Fire Department size (Full time only)</u>
Median	21,256	\$1,484,597,400	30
Pleasant Prairie	16,136	1,565,427,500	14
Mount Pleasant	23,142	1,738,188,700	47

Pleasant Prairie's population falls 5,120 below the median and 7,006 below Mount Pleasant and is ranked 7th of the nine proposed comparables. As pointed out by the Employer, Greendale has a lesser population than Pleasant Prairie and ranks eighth but is nonetheless included in the agreed-upon comparables by both the Union and the Town. Both Pleasant Prairie and Mount Pleasant are above the median in equalized value with Pleasant Prairie ranking fourth among the nine comparables. The data comparing full-time firefighters show a significant difference with Pleasant Prairie ranking eighth out of nine (St. Francis is the smallest department with 13 employees). The Employer does not address the striking difference in the number of full-time firefighters between Pleasant Prairie and its counterparts nor is there any explanation as to the status of the 32 paid-on-call employees, that is, whether they are part of the bargaining unit, how they are compensated, etc. Without this information the arbitrator is unable determine if an exception exists which would permit deviation from relying upon full-time status in the analysis. Had the parties agreed to include Pleasant Prairie based upon population, equalized value, geographic proximity, the arbitrator would not disturb that selection. However, in the present situation there is insufficient compelling evidence to include a

community which apparently has not been relied upon in the past and whose fire department size is significantly smaller than the other communities.

In considering the inclusion of Pleasant Prairie the arbitrator has looked to the comparables in the interest arbitrations involving the Town of Caledonia to see if Pleasant Prairie was considered. In his 1999 award, Arbitrator Malamud adopted the Union's proposal to add Greenfield but specifically declined to accept the Union's proposal to include Racine in the pool based upon its much larger population, the much larger size of the department, as well as the extraordinary difference in the departments' operational budgets. The result was the adoption of the seven communities proposed by the Union in the instant case.

In a more recent case involving the Town of Caledonia Fire Department, Arbitrator Howard Bellman stated:

The parties agree that comparison should be made, as it was in a previous interest arbitration, to the Cities of Cudahy, Franklin, Greendale, Greenfield, Oak Creek, and South Milwaukee; and the Town of Mount Pleasant. (*Town of Caledonia Fire Department*, Decision No. 30252-A (07/31/02).

The arbitrator relies heavily upon the close living and working relationship, that is, sharing an identity in terms of actual service, between the Mount Pleasant and Caledonia firefighters in concluding that the latter's established comparability group should be the same for Mount Pleasant.

It is therefore held that the Union's proposal of seven communities, i.e., Caledonia, Cudahy, Franklin, Greendale, Greenfield, Oak Creek, and South Milwaukee shall be selected as the external comparables for purposes of analyzing each of the parties' final offers.

2. Internal Comparables

a. Argument of the Union

The Union places great weight on a comparison of Mount Pleasant police officers and the firefighters. It is noted that Town Hall employees who are represented by Local

847 of the American Federation of State, County, and Municipal Employees (AFSCME) entered into a collective bargaining agreement covering the years 2001, 2002, and 2003 and received a 5% increase in wages in each of the three years (Union Ex. 302; Union Ex. 509).

b. Argument of the Town

The Employer asserts that the internal comparables should comprise all of the other bargaining units within the town, excluding managerial or non-union employees. The Town's bargaining units are as follows: Police (Employer Ex. 5); Highway and Sewer (Employer Ex. 6); Dispatchers (Employer Ex. 7); clerical employees (Employer Ex. 8).

c. The Arbitrator's Decision

The Union has supplied copies of the contracts for the Mount Pleasant Police Officers' Association (WPPA) (Union Ex. 301); the Mount Pleasant Town Hall Employees (AFSCME) (Union Ex. 302); the Police/Fire Dispatcher Employees (WPPA) (Union Ex. 303). No contract has been provided for the Highway and Sewer employees.

The Employer has provided the portions of collective bargaining agreements for the Police Department, the Highway Department and Sewer Department Employees, the Town Hall employees, and the Police/Fire Dispatchers relating solely to worker's compensation (Employer Ex. 50, pages 1-3).

It appears from the Union's Reply Brief that it has gone beyond a limited comparison with the Police Department and AFSCME and has considered all four of the organized units (page 15). Since there is no contention that all four of the internal comparables are not relevant, the arbitrator will consider AFSCME, Police/Fire Dispatchers, Highway and Sewer Department Employees, and the Police Department in the following analysis.

B. Duration of the Agreement

1. Argument of the Union

The Union disputes the Town's claim that a one-year contract is needed for

economic reasons. It is contended that the Town has entered or is prepared to enter into multi-year contracts with the Town's other bargaining units that extend beyond 2002.

Examples provided are:

1. Town of Mount Pleasant Labor Contract Proposal to the Mount Pleasant Police Officer's Association: Duration: 2 years—2003-2004 (Employer Ex. 2)
2. Town of Mount Pleasant wage settlement with the Highway/Sewer unit extends to 2004 (Employer Ex. 6)
3. Town of Mount Pleasant and Police/Fire Dispatchers unit: duration 2 years—2003-2004 (Union Ex. 303a)

The Union contends that the most compelling evidence to refute the Town's claim regarding the need for a one-year contract with the Firefighters is that the Town entered into a contract with a two-year term with the Police/Fire Dispatchers on July 23, 2002, seven days after it submitted its July 16, 2002 final offer in this case. It is argued that the Town should not be allowed to insist on a one-year contract for economic and health insurance reasons in one instance and then reverse itself by agreeing to a multi-year term with another bargaining unit.

The Union further asserts that arbitrators have recognized that multi-year contracts promote industrial stability (citations omitted). The historical pattern of settlements between the Town and the Union reflects that there has never been a one-year contract. Contracts for 1990-1991, 1992-1993, and 1994-1995 were for two years. The last two contracts were for three years, i.e., 1996-1998 and 1999-2001.

It is argued that the Town's ability to address the issue of insurance will not be adversely affected by the two-year term proposed by the Union. The Union's contract would expire in 2003, the same time as AFSCME's and the police/fire dispatchers' agreements and one year after the police department agreement and a year before the highway department's agreement.

Finally, the Union argues that the circumstances in the *City of Rhinelander* arbitration

(discussed below) are distinguishable from the instant case. In that case the terms of the Employer's final offer, including duration, was identical to the offers accepted and settled with its three other labor unions. In Mount Pleasant, no internal settlement pattern exists. The Town has reached different agreements on both percentage wage increase and term (duration) with its other units.

2. Argument of the Town

The Town relies on arbitral precedent in support of its proposal of a one-year agreement in order to address the rising costs of health insurance. In the *City of Rhineland*, Dec.30198-A (2002), Arbitrator Rice adopted the employer's final offer which included its one-year duration because it would provide the employer with a chance to protect itself against escalating health insurance costs.

Town Administrator Kevin O'Donnell testified that there is a need for a one-year contract in order to address rising health costs, i.e., a 25% increase. In 2003, the Town faces a 20% increase. Such costs have been a major factor in negotiations with all bargaining units according to Mr. O'Donnell. In addition, the Town wishes to line up the Police and Fire contracts which together comprise half of the Town's workforce.

In response to the Union's argument regarding "a historical pattern of "multi-year" agreements, the Town asserts that while this may be true, it misses the point, and denies that a pattern of two-year agreements exists. The Town's proposal for a one-year contract is based on a real need to address health insurance costs and is supported by the formation of a labor-management committee to address this issue.

3. The Arbitrator's Decision

a. Duration based upon internal comparables. Inspection of the available collective bargaining agreements for the other bargaining units in Mount Pleasant provided by the Union regarding their duration indicate that all have or had multi-year contracts, i.e., Mount

Pleasant Police Officers' Association had a three-year contract from January 1, 2000 to December 31, 2002 (Union Ex. 301); Mount Pleasant Town Hall Employees had a three-year contract from January 1, 2001 through December 31, 2003 (Union Ex. 302); Mount Pleasant Police/Fire Dispatchers have had a three-year contract from January 1, 1999 through December 31, 2001, and a two-year contract from January 1, 2002 through December 31, 2003 (Union Ex. 303).

Data provided by the Employer shows the following:

The Firefighters have had two or three-year contracts beginning in 1992 and running through 2001 (Employer Ex. 4).

The Police had a history of two-year contracts from 1992 to 1999 and a three-year contract from 2000 to 2002 (Employer Ex. 5).

The Highway and Sewer employees have had two or three year contracts beginning in 1994 and running through 2004 (Employer Ex. 6).

The Dispatchers had a history of two-year contracts from 1992 through 2000, a one-year contract in 2001, and a two-year contract from 2002 through 2003 (Employer Ex. 7).

With the single exception of a one-year contract for the Dispatchers, the pattern among the internal comparables has been for either two- or three-year contracts. While no doubt there is concern for anticipated future increases in the cost of health insurance, the arbitrator believes it would be inequitable for the Town to cause one bargaining unit to bear the brunt of as yet unknown costs while not demanding the same of its other employees. Thus the instant case differs from the circumstances found in the *City of Rhinelander* which was relied upon by the Town. In that case Arbitrator Rice said:

The primary issue between the 2 parties is the duration of the agreement. . . The problem arises with respect to the year 2002 and 2003. The Employer has no proposal for either of those years to measure against the proposal of the Association or to measure against the settlements in Comparable Group B [internal comparables]. The Arbitrator is reluctant to find that the Association's

proposal for 2002 and 2003 more closely adheres to the statutory criteria than the Employer's proposal when the Employer *has nothing on the table for comparison*. (*Emphasis added*).

Perhaps the aspect that most distinguishes *City of Rhinelander* from Mount Pleasant is shown in the following statement by Arbitrator Rice:

The Employer has reached agreement on the wages and other conditions of employment with the groups representing all of it's (sic) other employees for the year 2001 and it has established a pattern that treats all of these employees pretty much in the same manner. The Employer's proposal to the Association for the year 2001 would match up very favorably with the agreements that it has reached with all of its other employees. (Discussion, ¶ 3).

* * *

The Employer's final offer is identical to offers accepted and settled with it's (sic) 3 other labor unions. (Discussion, ¶ 6).

In the instant case, the Employer's final offer to the firefighters is not identical to the duration of contracts with its other bargaining units. The arbitrator finds that the Union's position on the duration of the contract based upon the internal comparables is the more reasonable.

b. Duration based upon external comparables. The following table lists the terms and duration of collective bargaining agreements in the seven external comparable communities (Union Exs. 201 through 208:

<u>Community</u>	<u>Term of Contract</u>	<u>Duration</u>
Caledonia	2000 - 2002	3
Cudahy	2000	1
Franklin	2001 - 2003	3
Greendale		
(Final offer)	2002 - 2004	3
(Previous contract)	1999 - 2001	3
Greenfield	2002 - 2003	2
Oak Creek	2001 - 2003	3
South Milwaukee	2000 - 2002	3

Of the seven fire departments being compared, five of seven have or had three-year contracts, one has a two-year contract, and one has a one-year contract. The Union's offer of a two-year contract is not out of line with the majority of multi-year contracts and is

therefore deemed to be the more reasonable of the final offers on duration of contract.

C. Wages

1. Argument of the Union

a. External comparables

The Union relies upon the annual base wage of a top-step Mount Pleasant firefighter/motor pump operator vis-a-vis the seven comparable fire departments. It is claimed that if the Town's offer is accepted, in 2002 the Mount Pleasant employees would fall from seventh place in 2001 ranking to eighth place. In addition, there would be an increase in disparity with the comparable wages. Arbitral precedent is cited in support of the Union's goal of moving the bargaining unit toward the average and relevant data is supplied.

The Union further argues that the Employer's inclusion of longevity in its final offer should not be accepted since longevity does not apply to every Mount Pleasant firefighter who has reached the top of the salary schedule, i.e., the contract provides that employees hired on or after January 1, 1994 will not be eligible for any longevity payments. It is pointed out that the present arbitrator addressed problems with longevity pay in a 1991 case (citation omitted). The effect of including longevity pay as proposed by the Town farther removes Mount Pleasant from the average. The Union contends that even if longevity is added to the base rate calculation the comparison supports the Union's final offer. It is also argued that the evidence does not support the Town's contention that total compensation supports its final offer.

b. Internal comparables

The Union asserts that particular attention should be paid to the comparative wage and benefit relationship between police officers and firefighters. Comparisons between top-step firefighters/motor pump operators and top step patrol officers as well as with top-step police investigators are provided (Union Ex. 801; Initial Brief, page 19-20). The Town's final offer on

the base wage for 2002 continues to increase the disparity between these two bargaining units, i.e., \$508.13 less than the top-step patrol officer position, while the Union's offer is \$25.19 less. When firefighter/motor pump operator is compared to top-step police investigator, the disparity of the Town's offer is \$5,345.13 less than police and the Union's offer is \$4,862.19.

The Town Hall employees, represented by AFSCME, received a 5% increase in wages in each of three years. The Town justified the wage by asserting that a catch-up was required. The Union believes that catch-up increase should also be awarded to the firefighters whose wages are not competitive with their comparable pool peers.

The Union further argues that there is no pattern of settlement among the internal comparables and provides a chart showing percent increases for 2002 and 2003 for AFSCME, Dispatch -- Step 4, Highway/Sewer, and Police with an average increase of 3.75% in 2002 and 3.833% of settled units in 2003 (Reply Brief, p. 15). Extensive argument is made contending that the Town has not provided sufficient evidence on the need for catch-up as set forth in arbitral awards.

The Union concludes that the Town's internal settlements contradict its economic arguments and fail to demonstrate a pattern of internal settlements and should, therefore, be rejected.

2. Argument of the Town

The Town contends that it spends more on firefighters' salaries than all other departments combined, excluding the police, and that its final offer reflects a continuation of pay which is above average. In negotiations, the Union asserted that it would not settle for anything less than 3% each year; the Town's final offer satisfies the Union's bottom line. It is also noted that the Town's ability to spend is limited by the Expenditure Restraint Program of the State. The arbitrator is reminded of the State's budget crisis which may result in a decrease in shared revenues. The Town's one-year offer better reflects this reality.

a. External comparables

Data comparing the Mount Pleasant firefighters with neighboring communities is provided in Employer Exs. 27-36 (based on 9 communities and 12 positions; including base pay and longevity). Summaries of these data are provided in the Town's brief (pages 14-15) which, it is argued, illustrate that the Town's wage offer keeps its firefighters, paramedics, and lieutenants' wages comparable. In some cases, firefighters would earn more annually than the comparable community average.

The Town further argues that the *total compensation* of their final offer supports their position pursuant to Wis. Stat. 111.77(6)(f). The entire financial package is substantial and comparable with the Town's other bargaining units and the external comparables. The Town reorganized the fire department in 2000 eliminating part-time positions which resulted in 42 full-time firefighters – an increase of 27.3% in departmental expenditures (Employer Ex. 57).

To be included in total compensation are the following:

1. Longevity pay: The Town contends that it spends substantially more than the next highest comparable, i.e., \$1,212 versus \$864 (Employer Ex. 36).

2. Dental insurance: The Town pays 100% of the premium whereas employees must pay some or all of the premium in many of the other communities (Employer Ex. 39).

3. Life insurance: The Town fully funds this plan for which firefighters are eligible upon hire. Other communities require, e.g., a waiting period of 3 years to receive full payment (Greenfield) or six months and 75% coverage in Oak Creek (Employer Ex. 40).

4. Retirement fund: The Town pays 100% for the fund; Cudahy pays 9% and Greendale pays 8%. The Town's full funding of this benefit must be taken into consideration when evaluating the reasonableness of its offer.

5. Uniform allowance: The Town provides \$350 for firefighters' uniform allowance which it is claimed is on a par with the external comparables. (Employer Ex.44).

6. Funeral leave: Employer Ex. 45 shows that Mount Pleasant provides 3 days of funeral leave. Of the comparables, only one, Franklin, reaches that level while all the others provide fewer days.

7. Sick/Personal/Emergency leave: Employer Ex. 42 shows that the Town provides sick leave of twelve hours per month in a year with an accumulation of up to 1,680 hours. It is asserted that this compares favorably with the external comparables. Emergency leave permits employees to take 30 unpaid calendar days; some of the comparables provide no emergency leave.

8. Health insurance: The Town pays 95% of the least expensive plan. As a result the firefighters pay a nominal amount (Employer Ex. 37). The Town has seen its costs for health insurance increase 25% over the past two years and will face a 20% increase in 2003. The arbitrator is urged to consider rising health-care costs as part of the equation.

The Town concludes that its total compensation package for firefighters compares favorably with the external comparables and should be adopted.

b. Internal comparables

The Town proposes that the internal comparables should comprise all of the other bargaining units within the Town, but not managerial or non-union employees. The Town's bargaining units include the police, highway and sewer employees, clerical employees and dispatchers.

It is asserted that the Town's proposal of a 3% across-the-board wage increase for firefighters effective January 1, 2002, is identical to a 3% wage increase received by the police and the Highway and Sewer unit (for 2002, 2003, and 2004). For 2002, the Town's dispatchers (Steps 1 through 3) received a 3% increase. The only bargaining unit which received more than a 3% increase was the Town Hall unit which received a 5% increase for 2002 and 2003. It is asserted that the Town's clerical employees were underpaid relative to secretaries in external

comparables.

The Town argues that the Union has not demonstrated that the firefighters need a catch-up similar to that of the clerical employees. The comparison with the police, whose work is more like the firefighters than other bargaining units, demonstrates an identity of wage increase.

c. The Consumer Price Index

The Town makes reference to the statutory provision which directs the arbitrator to compare the wage offers of the parties with “the average consumer prices for goods and services, commonly known as the cost of living” [Wis. Stats. 111.77(6)(e)]. The latest statistic indicate a 2.1% rise in the national consumer price index (CPI) (Employer Ex. 26). It is contended by the Town that its 3% wage offer far surpasses the consumer price index -- one more reason for the arbitrator to adopt the Town’s final offer.

3. The Arbitrator’s Decision

The statute requires the arbitrator to give weight to a comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally. In this regard firefighters in seven other communities have been determined to be appropriate comparables and characterized as “external comparables.” In terms of “other employees generally” arbitrators have considered the “internal comparables,” that is, the other bargaining units which have collective bargaining units with the Town of Mount Pleasant. As discussed early, the appropriate internal comparables for Mount Pleasant are AFSCME, Dispatchers, Highway/Sewer, and Police.

a. The external comparables

The Employer argues that a proper analysis of the wage offers in the comparable communities should include more than just the wage base rate and cites the statutory criterion which directs the arbitrator to consider the “overall compensation presently received by the

employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received” [Wis. Stat. 111.77(6)(f)].

In the instant case the Employer has provided data for the external comparables including longevity pay, dental insurance, life insurance, retirement fund contribution, uniform allowance, funeral leave, sick/personal/emergency leave, and health insurance (Town pays 95% of premium for least expensive plan) in addition to base pay.

The Union relies on base pay when comparing Mount Pleasant Fire Fighters to firefighters in other communities, particularly Caledonia. The Union cites the present arbitrator who declined to consider longevity in a particular interest arbitration because the add-ons affected only some, but not all, of the comparable counties (*Brown County (Mental Health Center)*, Dec. No. 26867-A, 12/91. This is not the case herein where all of the seven comparables provide longevity pay ranging from Caledonia paying after one year of service, and all municipalities providing a payment after five years.

In Mount Pleasant of 42 employees, 11 do not receive longevity pay (Employer Ex. 23). Of these 11, one was hired in 1999, nine were hired in 2000, and one was hired in 2001. This comports with Section 14.3 of the collective bargaining agreement which specifically excludes longevity pay for employees hired on or after January 1, 1994.³

The Union argues that even if longevity pay is added to the base rate, the result supports its final wage offer. A table showing the top step firefighter/motor pump operator hired on January 1, 1994, 2002 wage comparison with longevity included, demonstrates that the Union’s final offer falls \$538.03 below the median of \$48,879.84 (Franklin) while the Town’s

³ A comparison of hiring dates (Employer Ex. 56) and hiring dates and longevity (Employer Ex. 23) reveals that despite the contract language, employees hired on or after 1994 have received longevity pay. Employees who have five years of more of service are receiving longevity pay. See, e.g., MPO Lockhart, hired 04/30/95–\$392; FF-P Alton, hired 01/11/98–\$382. Employees hired in 1999, 2000, and 2001 do not receive longevity pay.

offer is \$1,150.97 below the median (Union's Initial Brief, p. 16)

The arbitrator notes that the Union has provided data for 2002 for the seven comparables⁴ which includes, in addition to base pay, holiday pay, uniform allowance, EMT premium pay, and longevity pay. A category called "other pay" is shown for Caledonia, Franklin, and Greendale, as well as in the final offers of the Town and the Union, however, these amounts are not included in the calculation of total compensation earned.

The arbitrator, after careful consideration of the evidence submitted at hearing and the arguments proposed by the parties, concludes that the appropriate comparison of the parties' final offers with the external comparables should be the total compensation earned and not simply the base rate. Such an analysis more closely follows the statutory mandate (Wis. Stats. 111.77(6)(f)).

The following table reflects the total compensation earned is derived from Union Ex. 803 for the year 2002 for ten-year motor pump operator, the average (median) of the seven comparable fire departments, and the deviation from the median of the final offers of the Union and the Town.

<u>Community</u>	<u>Total Compensation</u>
Caledonia	\$ 48,482.02
Cudahy	49,859.63
Franklin	49,447.84
Greendale	48,432.10
Greenfield	52,123.00
Oak Creek	50,864.39
South Milwaukee	53,110.93
Median	49,859.63
Union Offer	50,243.34
Town Offer	49,752.44

⁴Data is included for St. Francis, which as determined earlier by the arbitrator will not be included in the analysis of external comparables.

Of the seven comparable communities, Cudahy falls at the fourth rank representing the median or average. The Union offer exceeds the median by \$383.71; the Town offer is \$107.19 below the median. Based on these findings, the arbitrator holds that the total compensation offer of the Town is the more reasonable when compared with the external comparables and it is, therefore, adopted.

b. The internal comparables

The Union asserts that a comparison with the Town's police department reveals a disparity which the Union is attempting to correct in its final offer. The Union has lagged in its base wage as is shown in a comparison of top-step firefighter/motor pump operator with both top-step patrol officers and top-step police investigators (Tables, Union brief, pages 19 and 20). The Union argues that it has demonstrated a need for "catch-up" particularly where ability to pay is not at issue. The disparity in wages between a firefighter and police investigator will increase from \$4,859.70 in 2000 to \$5,345.13 in 2002 if the Town's offer is accepted.

The Town argues that its final offer of 3% across-the-board for firefighters is identical to that which the police received in 2002, as did the unit dispatchers (steps 1 through 3), and the highway and sewer employees for 2002-2004. Only the Town's clerical employees received a greater increase, 5%, necessitated by a very large disparity with what secretaries in the external comparables received. Thus, a "catch-up" in this category was required. The Town claims that the firefighter unit has not demonstrated a similar need.

The Town further provides a historical comparison showing of wage increases from 1993 through 2002 for firefighters and police (Town Reply Brief, p. 2). These data show that the firefighters have done as well or better than the police in terms of wages.

The problem confronting the arbitrator is trying to compare data on internal comparables which have been provided in differing forms, i.e., the Town's percent increases versus the

Union's base wages in dollars. Even if the arbitrator were to concentrate solely on a comparison between firefighters and police officers, which patently differ from highway and sewer, clerical, and dispatcher employees, which appears to be the emphasis suggested by the Union, the fact that both police and fire are being offered 3% for 2002 must be viewed as treating both bargaining units consistently. Although the Union's data show discrepancies between the two units, they are not as pronounced in one of the two comparisons provided by the Union, i.e., firefighters and top-step patrol officers (source, Union Ex. 801; at page 19, Union's Initial Brief)). In this exhibit the difference between the two units in base wage rates for 2000 was \$23.70, in 2001 it was \$493.20 with the police receiving the higher wage. In 2002, if the Town's offer is adopted the firefighters would receive \$508.13 less than the police; if the Union's offer is adopted, the Union would receive \$25.19 less than the police.

Certainly the data reveal that the firefighters will receive less than the police in terms of base wages, however, the arbitrator has no way of discerning how the differences came about over the years. For example, did the police negotiating team trade off some desired improvement in order to improve wages? Each bargaining unit negotiates for certain improvements that their members may value more than other employees -- this can result in differences in economic benefits as well as contract language among the internal comparables.

This is not a case in which the Employer argues an inability to pay; Mount Pleasant is the third highest in equalized value among external comparables. Mount Pleasant officials are projecting that their community will grow in population and become the hub of growth in Racine County. However, Mount Pleasant, along with all Wisconsin municipalities, is faced with the same budget constraints and an uncertain future regarding revenue sharing as well as large projected increases in the cost of health insurance. It seems to this arbitrator that the Town has attempted to offer substantially similar wage increases to its bargaining units in 2002, and with minor deviation, the 3% across-the-board increase continues the historic pattern of treating the

fire and police departments similarly. In addition, the Town's 3% wage offer exceeds the Consumer Price Index of 2.1%. The arbitrator concludes that the internal comparables support the Town's final wage offer.

Based on the discussion above, it is held that the Town's final offer on wages is the more reasonable of the parties' offers and it is therefore adopted.

D. Other issues in dispute

The Union has proposed significant changes to the contract language in its final offer, i.e., to make firefighters who have suffered a job injury whole without the need to use their sick leave while receiving Workers Compensation; to provide two additional holidays as extra pay and allow bargaining unit members to take the two days as time off in lieu of pay; and to alter the vacation selection policy to permit a maximum of 5-day blocks rather than 3. Both the holiday and vacation provisions had been tentatively agreed upon, however, when voluntary settlement was not reached, the Town argues, these agreements were no longer viable.

Both the Union and the Town have provided extensive argument and supporting data on these three issues. It is the arbitrator's opinion that, although these issues played a role in the negotiations and final offers of the parties, they are not the deciding factors for the arbitrator in selecting one of the final offers. The Union has cited several interest arbitration decisions in which there is agreement that wages play the most important role in the selection of a final offer.

In its conclusion, the Union states:

. . . At its core, this case is all about economics. It is about how long the employer should be required to wait to demand benefit concessions from its fire fighters, how much its fire fighters should be paid and whether the current economic climate justified the employer's rejection of the Union's proposed increase. *The other matters pale in contrast.* (Union Reply Brief, page 27, emphasis added).

It is clear that any decision on these three issues would not carry the quantum of weight to which the final wage offer is entitled. The arbitrator, therefore, will not subject these data to further discussion and analysis.

V. SUMMARY

The arbitrator has made the following findings regarding the issues in controversy:

1. External Comparables: The arbitrator selected the Union's proposed comparable communities: Caledonia, Cudahy, Franklin, Greendale, Greenfield, Oak Creek, and South Milwaukee.

2. Internal Comparables: Although the Union placed special emphasis on a comparison of firefighters and police officers, there was no substantial disagreement with the Town that all of Mount Pleasant's bargaining units were appropriate comparables. These include: police, clerical, highway and sewer, dispatchers.

3. Duration: The arbitrator found that the Union's proposal of a two-year contract was the more reasonable based both on internal and external comparables.

4. Wages: The arbitrator found that the appropriate comparison with the external comparables was to be based upon total compensation as proposed by the Town and not base rate. Applying that data, the Town's offer was held to be the more reasonable. In addition, the Town's wage offer was deemed to be supported by the internal comparables.

Despite the fact that the arbitrator found that the Union's proposal for a two-year contract more closely met both the internal and external comparables, that finding must fall in light of the far greater weight which is traditionally given to a wage offer particularly when Wisconsin law mandates the selection of the total final offer of one of the parties. Under these circumstances, the final offer of the Town of Mount Pleasant is determined to be the more reasonable and is selected.

VI. AWARD

Based upon the discussion above, the final offer of the Town of Mount Pleasant shall be adopted and incorporated in the parties' Collective Bargaining Agreement for 2002.

Dated this 23rd day of May, 2003 at Milwaukee, Wisconsin.

Rose Marie Baron, Arbitrator

Name of Case: Town of Mount Pleasant Fire Department
Case No. 16 WERC No. 60656 MIA-2431

The following, or the attachment hereto, constitutes our final offer for the purposes of arbitration pursuant to Section 111.70(4)(cm)6, of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me. Further, we **do not** authorize inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted to the Commission.

July 16, 2002
(Date)


(Representative)

On behalf of: Town of Mount Pleasant

App 4

**Name of Case: Town of Mt. Pleasant (Fire Dept.)
and IAFF Local 2939
Case #16, No. 60656, MIA-2431**

The attachment hereto constitutes our final offer for the purposes of arbitration pursuant to Section 111.77(4)(b) of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me.



John Kiel, Attorney
On behalf of IAFF Local 2740

7/5/02

Date

App B

FINAL OFFER OF
THE PROFESSIONAL FIREFIGHTERS OF MOUNT PLEASANT,
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 2939, AFL-CIO
TO
THE TOWN OF MOUNT PLEASANT

JULY 3, 2002

Local 2939 proposes to continue the terms of the 1999-2001 collective bargaining agreement except as modified below and by the attached tentative agreements between the parties.

1. Term of Agreement: Local 2939 proposes a two-year contract term covering the period between January 1, 2002 to and through December 31, 2003.
2. Wages: Local 2939 proposes across-the-board wage increase of 2% effective January 1, 2002, an additional 2% effective July 1, 2002, an additional 2% effective January 1, 2003, an additional 2% effective July 1, 2003.
3. Worker's Compensation: Replace Article XXX, with provisions that read:

Add a new 30.1 that reads:

An employee who sustains an injury while performing within the scope of his/her employment, as provided by Chapter 102 of the Wisconsin Statutes (Worker's Compensation Act), shall receive compensation in addition to that provided by worker's compensation if the employee is unable to work due to a temporary total or temporary partial disability because of said injury. Nothing herein shall be construed as a limitation of worker's compensation benefits to which an employee may be entitled.

Add a new 30.02 that reads:

Employees covered under this Agreement shall receive the difference between the amount received in worker's compensation pay plus any other employer paid disability benefits received and the employee's regular (non-injury) base rate of pay, commencing on the first day of compensable injury. Under no circumstances will the employee's total net compensation from worker's compensation plus other employer paid disability benefits exceed an amount equal to 100% of the employee's regular (non-injury) after tax base pay. The difference in worker's compensation plus other employer paid disability benefits, and the employee's regular (non-injury) after tax base pay shall be paid by the Town, upon satisfactory confirmation of worker's compensation plus other employer paid disability benefit payments. Voluntary and mandatory payroll deductions shall be excluded from any initial computation of pay under this section. Following

App B

JPK
7/3/02

computation of the duty disability payment by the Town, mandatory and voluntary payroll deductions shall occur.

Add a new 30.03 that reads:

The Town shall continue to pay health and life insurance premiums, as well as the required Wisconsin retirement fund contributions, for the disabled employee, on the same basis as for active employees for the duration of his/her duty disability pay. Employees unable to work as a result of duty disability shall not accrue or receive any other paid benefits under this agreement, except seniority.

Add a new 30.04 that reads:

This article shall no longer be applicable to an employee when it is determined that the employee's compensable injury is permanent and the employee begins receiving duty disability benefits as determined by the Department of Employee Trust Funds.

Local 2939 reserves the right to add to, amend or delete any provisions in this proposal during the course of the final exchange of offers.

App B

JBL
7/3/02

Town of Mount Pleasant proposal to Fire Union
11-29-01

TH 11-29 10:11
B. TH 11-29 10:11
11-29-01

Article XIII Last sentence to read as follows: Two additional holidays (24 hours each) will be provided as extra pay prior to March 1 of each year; however employees will be allowed to select these two holidays as time off in lieu of pay after all employees have selected vacation time pursuant to section 18.2, ~~the department incurs no overtime in granting the time off~~, and selection is made by January 5th of each year.

TH 11-29 10:30
B.

Article XVIII g) to read as follows: Vacations will be selected by Department seniority and shift. Each employee will be allowed to select a maximum of a 5 day block and the process will then be repeated one more time to allow employees to select another maximum 5 day block. Any remaining vacation days will then be selected in maximum of a 3 day block or individual days until all employees have exhausted all their vacation time. This process shall be conducted and concluded by December 31st each year. ~~The Department shall incur no overtime in the granting of vacation.~~

TH 11-29 10:30
B.

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Dept.		Phone #	61903-791 (262)
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App B

7/3/02