

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a
Dispute Between

SUPERIOR FIRE FIGHTERS, LOCAL 74,
INTERNATIONAL ASSOCIATION OF FIRE
FIGHTERS, AFL-CIO

For Final and Binding Arbitration Involving
Fire Fighter Personnel Employed by the

CITY OF SUPERIOR

Case 184
No. 61655
MIA-2482
Dec. No. 30489-A

Appearances:

Mr. Patrick A. Kilbane, District Field Service Representative, International Association
of Fire Fighters, on behalf of the Union.

Ms. Mary Lou Andresen, Human Resources Director, City of Superior, on behalf of the
City.

ARBITRATION AWARD

The above-captioned parties, herein “Union” and “City,” selected the undersigned to issue a final and binding award pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act (“MERA”). A hearing was held in Superior, Wisconsin, on January 23, 2003. The hearing was not transcribed and the parties filed briefs and reply briefs that were received by March 27, 2003.

Based on the entire record and the arguments of the parties, I issue the following Award.

BACKGROUND

The Union represents for collective bargaining purposes a unit of fire fighters employed by the City. The parties engaged in negotiations for a successor collective bargaining agreement to replace the prior agreement which expired on December 31, 2001, and the Union filed an

interest arbitration petition on October 3, 2002. The Wisconsin Employment Relations Commission (“WERC”) appointed Stephen G. Bohrer to serve as an investigator pursuant to Sec. 111.77(4)(b) of MERA and he met with the parties on December 17, 2001, and January 18, 2002, in an effort to mediate the dispute. The parties at some point reached a tentative settlement calling for a 3% across-the-board wage increase, but it was turned down by the Union’s membership. The investigation was closed on October 14, 2002, and the WERC on November 13, 2002, issued an Order appointing the undersigned to serve as the arbitrator.

FINAL OFFERS

The parties have agreed to a number of tentative agreements which are not in dispute and which were enclosed with their final offers. Both parties at the January 23, 2003, hearing also agreed that no tentative agreement had been reached on certain demotion language.

As for the issues in dispute, the Union has proposed the following final offer:

1. Wage terms and rates would be set as follows:
 - a) Effective January 1, 2002 – 4.5% general wage increase
 - b) Effective January 1, 2003 – 4.5% general wage increase

The City has proposed the following final offer:

- 1) One-year agreement, January 1, 2002 – December 31, 2002;
- 2) 3% wage increase effective January 1, 2002.

POSITIONS OF THE PARTIES

The Union claims that its offer of 4.5% across-the-board wage increases for January 1, 2002, and January 1, 2003, “more appropriately follows the employer philosophy of market comparisons” because the City since 1997 has embraced “a philosophy that its employees should

be paid wages comparable to the average wage of employees performing the same type of work in . . .” certain agreed-upon market comparables. The Union contends that the City in the past has followed that approach with its non-represented employees and all of its bargaining units, i.e., Local 235, the AFSCME clerical bargaining unit; Local 244, the AFSCME public works bargaining unit; and Local 27, the law enforcement unit represented by the Wisconsin Professional Police Associations (“WPPA”). The Union maintains that the City is adhering to its compensation philosophy with all of the employee groups except the fire fighters.

It also states that Superior fire fighters receive a total compensation package which ranges “from 14.14% to 14.81% behind the market comparisons” in part because they receive no sick leave payout; because they receive less holiday compensation; because they do not receive any Emergency Medical Technician pay; because they receive no educational benefit; and because they pay more for their health insurance. The Union adds that fire personnel at almost every rank and step are paid lower wages than their counterparts in the market comparables and that they are falling further behind those comparables. The Union further claims that internal settlement patterns are misleading because Superior fire fighters for the last several years have received higher wage settlements because they are so far behind and that the City has the ability to pay for the Union’s wage offer.

The City maintains that its wage offer of 3% on January 1, 2002, should be accepted because some of the Union’s figures regarding comparability are skewed and because the Union “ignores other key elements of total compensation,” including the City’s short-term disability program and the 25% increase in health insurance premiums for 2003. It contends that it is within 5% of the average wage comparables because the Fire Captain is 2.79% behind the average maximum comparable step; because the Motor Pump Operator is 2.03% behind the

average maximum comparable step; and because Fire Fighters are 5.8% behind the average maximum comparable step. It also asserts that the Union in the past has been granted “a number of adjustments” as catch-up; that the City’s police have not been treated any better than the fire fighters; that the City has, in fact, never agreed to parity with its various unions; and that its offer “for a 3% general wage increase is consistent with agreements reached for internal comparisons for 2002” and the 3% wage increase accepted by its police for 2003.

The City also states that while it still uses the market comparisons, “it has been more and more difficult for Superior’s taxpayers to support the cost of government . . .” because of their declining income; that “paying the average of the comparison cities’ wages has not been the definition of parity”; that the City’s finances are strapped because of the State’s expenditure restraint program; and that the City’s unresolved fund balance is at the lower end of the guidelines adopted by the Governmental Financial Officer’s Association. The City adds that its “offer is consistent with the nine external and four internal comparisons and maintains their salary within 5% of the market comparison average.”

DISCUSSION

The resolution of this matter turns on the application of Sec. 111.77(6), Wis. Stats., which states:

- (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 price 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.

Here, no issue has been raised over either the lawful authority of the employer, changes during the pendency of the arbitration proceeding, or “other factors”, and the stipulations of the parties do not weigh in either party’s favor. As for cost of living, the overall economic packages of both parties are above 5% and thus exceed the cost of living for 2002.

As for the remaining criteria, both parties have presented extensive evidence relating to the City’s financial ability to meet the costs of the parties’ final offers.

The total dollar difference between the parties appears to be only about \$3,297 for 2002, as the City's total package cost for 2002 is 5.34%, as opposed to the Union's total package cost of 5.59% for 2002 (City Exhibit 17). The Union's total package cost for 2003 is about 6%, i.e. the 4.5% wage adjustment it seeks effective January 1, 2003, and the 1.5% estimated cost caused by the 25% increase in health insurance premiums for 2003.

The Union claims that the City can afford to pay its fire fighters the 4.5 and 4.5 across-the-board wage increases it seeks over a two-year contract because the City has an unreserved fund balance of \$3,514,854, which it claims is well in excess of the reserve needed to protect the City's financial integrity. The Union thus relies on a June 26, 2002, letter written to Union President Steve Pranger from Kelley Parks from the International Union's Department of Labor Issues and Collective Bargaining which claims that the City's reserve is too high (Union Exhibit 49). The City contends that its reserve is not excessive under generally accepted accounting standards and it relies on a January 30, 2002, document prepared by the Committee on Accounting, Auditing and Financial Reporting of the Committee on Governmental Budgeting and Management which states that municipalities should maintain an "unreserved fund balance in their general fund of no less than five to 15 percent of regular general fund operating revenues, or of no less than two months of regular general fund operating expenditures" (City Exhibit 2). The City also points out that it may lose State aids if its labor costs drive its operating costs over the State's expenditure restraint program and that acceptance of the Union's offer will mean that expenditures must be reduced elsewhere in 2003.

The City may have difficulty in meeting the Union's proposal given its fairly narrow tax base, but that does not mean that it is impossible to meet the Union's proposal since it has an unreserved fund balance of \$3,514,848 and since the overall dollars in dispute are not that great.

At the same time, however, the City for 2002 had a budget surplus of only \$26, thereby showing just how tight the City's budget for that year. In addition, acceptance of the Union's offer will require the City to reduce expenses elsewhere in 2003 if it is to meet the State's expenditure restraint program. It also is true that the City in 2003 met the State's revenue limits by relinquishing control over collecting fire hydrant fees on behalf of Superior Water and Light. By giving up that activity, the City was able to reduce its tax levy about \$885,000 (City Exhibit 4).

Given the above, I conclude that the City has the ability to pay for the Union's offer even though that may cause some difficulty for the City.

Turning now to the separate factor of external comparables, both parties agree that the Superior fire fighters on average receive lower wages than their counterparts in comparable communities. The parties disagree, though, over the precise amount of that disparity.

Appendix C of the contract lists the comparable communities that are to be used for comparison purposes. It states: "Market comparisons will include Beloit, Eau Claire, Fond du Lac, LaCrosse, Manitowoc, Marshfield, Sheboygan, Stevens Point and Wausau." (These are the same comparables used for the City's other bargaining units). The parties therefore have presented extensive evidence over how much fire fighters in those comparable communities earn. That evidence shows Superior fire fighters at almost all steps and ranks are paid lower wages than their counterparts in the market comparisons.

The 3% wage increase proposed by the City for 2002 would result in the following: A Superior Fire Fighter with one year's service will receive \$33,952.92 in 2002 and \$34,971.51 in 2003 in comparison to the \$36,332.84 and \$37,403.12 average wage rate received by their counterparts (Union Exhibit 3). The maximum wage rate for a Superior Fire Fighter will be \$37,761.86 and \$38,894.72 in 2002 and 2003 in comparison to the \$42,114.49 and \$43,377.92

average wage rate received by their counterparts (Union Exhibit 8). The maximum wage rate for a Superior Motor Pump Operator will be \$40,251.37 and \$41,458.91 in 2002 and 2003, in comparison to the \$44,242 and \$45,568, average wage rate received by their counterparts (Union Exhibit 14). The maximum wage rate for a Superior Captain would be \$43,070.48 and \$44,362.59 in 2002 and 2003 in comparison to the \$49,905.87 and \$51,350.52 average wage rate received by their counterparts (Union Exhibit 26).

The Union's proposed 4.5% wage increases for both 2002 and 2003 (Union Exhibits 32 and 36) would raise the above ranks to the following:

	<u>2002</u>	<u>2003</u>
1. One year fire fighter step	\$36,273.00	\$37,905.29
2. Maximum fire fighter step	\$38,311.79	\$40,035.82
3. Maximum Motor Pump Operator step	\$40,837.56	\$42,675.25
4. Maximum Captain step	\$43,697.72	\$45,664.12

The Union's proposal therefore brings straight wages closer to the average straight wages paid in the comparable communities. The City's offer, by contrast, maintains the significant wage disparity that currently exists.

Other forms of compensation also must be considered in determining the Superior fire fighters' overall compensation.

Some fire fighters receive added pay for serving in certain specialty positions (Union Exhibit 40). Motor Pump Operator Specialists receive an added 2% or 4% of their wages and others receive an added 4% of their wages when serving as Fire Captain Specialists or as Fire Fighter Specialists. Specialty pay of one kind or another also is paid to fire fighters in the nine comparables (Union Exhibit 41).

Fire personnel here also receive hazardous materials pay. All of them get at least \$400; 6 to 20 of them get \$800; and 1 gets \$1,200 (City Exhibit 10). Only 3 comparables offer such payments.

Superior fire fighters who suffer off-duty injuries or illnesses have the most liberal short-term disability program of any comparable. After missing 5 working shifts because of off-duty illnesses or injuries, and without using either sick leave or vacation time, they receive 100% of their full wages up to their 93rd working shift. The City calculates that this benefit cost \$78,720 in 2002 (City Exhibit 13).

The Union states that the disability plan is needed to help offset the lower than average sick leave accumulation rate and the lower than average total accumulation of sick leave because it enables fire fighters who experience off-duty illnesses or injuries to keep more of their sick leave balance and to pay for health insurance upon their retirement. The Union also claims that the City's cost is inflated because fire fighters often are assigned to light duty work when they are out on such leave. Fire Chief Stephen Gotelaere, who had negotiated this clause when he was president of the Union, testified that such fire fighters never leave the station house; that they are not counted for the purpose of meeting the Fire Bureau's minimum manning requirements; and that replacements must be paid overtime to fill in for them, which is why this benefits costs so much. He also said that the City's costs would go down if this benefit were to be reduced because fire fighters would return to work quicker.

At 1320 hours, fire fighters here do indeed have the lowest level of sick leave accumulation, which makes them last among market comparisons (Union Exhibit 2). As for yearly sick leave, fire fighters here earn 144 hours of sick leave per year, which leaves them behind all market comparisons except for Fond du Lac which also grants 144 hours and Stevens

Point which grants 120 hours (Union Exhibit 2). However, only 8 fire fighters used this benefit in 2002, (City Exhibit 13), thereby showing that it is not evenly used by the bargaining unit. Directly improving the sick leave program for all fire fighters therefore may benefit more bargaining unit members than is now the case. In addition, the cost of the disability program for off-duty illnesses and injuries in 2002 may exceed the actual cost of improving the City's sick leave program to bring it closer to the market comparables.

Although it is difficult to precisely calculate what this benefit costs the City, it must cost more than the difference between the parties' two final offers. The City in the last negotiations thus tried to reduce this benefit, but the Union refused to agree because it believed that the City at that time also was attempting to change parts of the salary schedule.

Superior fire fighters receive no sick leave payout before retirement (they do upon retirement) and no education benefits and they, alone among the comparables, do not receive any Emergency Medical Technicians' pay even though they often perform a Medical Technicians duties before an ambulance arrives on the scene.

As for health insurance, four comparables (Beloit, Fond du Lac, La Crosse and Sheboygan) do not require their employees to pay any of the insurance premiums while another five (Eau Claire, Manitowoc, Marshfield, Stevens Point and Wausau) require employees to pay between 5% - 14% of the premiums. The fire personnel here, along with other City employees, do not pay any of the single premium and they pay 5% for family and/or spouse coverage.

Hence, some of the above forms of compensation support the Union's case, while others support the City's case. On balance though, because they are so far behind in straight wages, I find that the comparison of external comparables favors the Union.

The Union maintains that the City “embraces a philosophy that its employees should be paid wages comparable to the average wage of employees performing the same type of work in cities or jurisdictions (the market) considered comparable with the City of Superior,” as shown by a 1997 non-union Compensation Executive Summary (Joint Exhibit 9) which established a strategy of bringing wages up to market comparables. The Union also relies on Finance Director Jean Anderson’s testimony that the City still adheres to this philosophy as seen by the City’s past negotiations with the City’s clerical, public works, and police bargaining units. The Union thus claims that “WPPA Local #27 employees are now much closer to the average of their market comparisons,” and that the City “is following its philosophy with all of the employee groups except the fire fighters.”

In support of this claim, the Union relies on the testimony of Terri Kolan, a former officer of AFSCME Local 235, who testified about past City negotiations involving the two AFSCME bargaining units and the police unit. The Union also contends that the testimony of Mary Lou Andresen, the City’s Director of Human Services, establishes that the City’s philosophy is to attain or maintain wages for its employees that are comparable with their respective market comparisons and that the City has done so by paying police “much closer to the average of their market comparisons”.

The City in the past did grant higher wages to various groups of employees, including fire fighters, in an attempt to bring them closer to their market averages. Some City employees at certain times thus did better than others, including fire fighters. Nevertheless, the City never agreed or guaranteed that it would achieve absolute market parity. In addition, the City’s position is supported by the past negotiations of the parties which reveal that the parties always reached voluntary settlements that did not bring bargaining unit members up to the market parity now

sought by the Union. The City therefore correctly states that “the market is a moving target” that is reviewed during negotiations to determine “relative position to the market”, with no guarantee that the wage here will be equal to the average wages paid there. This case thus must turn on the statutory criteria stated above as applied to current conditions, as opposed to what the City did in the past.

By the same token, little weight can be given to the City’s claim that its 3% wage offer for 2002 keeps fire fighters within 5% or 10% of the market average (the record is unclear on this point) and that its offer therefore should be adopted because the Superior City Council has adopted a policy of keeping fire fighters and other City employees within that range. The Superior City Council’s actions regarding the City’s internal pay policies, however, have little weight in a proceeding such as this which is governed by the statutory procedure referenced above. That is particularly true when, as here, bargaining unit members are paid considerably less than their counterparts in the nine market comparables. They therefore can try to raise their wages to those levels under Sec. 111.77(6), Wis. Stats., regardless of what the Superior City Council does or does not do.

Internal comparables clearly favor the City. The two AFSCME bargaining units and the WPPA police bargaining unit all agreed to one-year contracts in 2002 which granted a 3% across-the-board increase effective January 1, 2002. That 3% increase also was given to the City’s non-represented employees. By seeking a 4.5% increase in 2002, the Union is seeking a wage increase in excess of what was paid to all other City employees in 2002. In addition, the WPPA bargaining unit agreed to a 3% wage increase for 2003 with no changes in health insurance. The Union’s 4.5% offer for 2003 also exceeds that internal wage settlement.

The Union's proposed two-year duration also runs counter to the one-year duration agreed to by the three aforementioned bargaining units in 2002. A longer contract may be preferable to a shorter contract in some circumstances if all other factors are equal because a longer contract provides for greater stability in collective bargaining. Hence, rejection of the Union's two-year duration and adoption of the City's one-year duration will mean that the parties must immediately commence bargaining over the terms of a 2003 contract.

Acceptance of the Union's two-year offer, however, will allow the Union to have a contract for 2003 even though it has never bargained with the City over the significantly higher health costs generated by the 25% increase in the City's self-funded health insurance premiums for the 2003 calendar year, which followed a 15% increase in 2002 (City Exhibit 3). In addition, the City under the Union's proposal must add that cost – which amounts to about 1.5% of the total package cost - on top of the 4.5% wage increase it seeks in 2003, thereby bringing the Union's total package cost for 2003 to about 6%. When combined with the 5.59% total package cost of its 2002 wage offer, the Union's two-year wage proposal amounts to about 11.59%.

This case thus boils down to whether the Union's need to catch up with the average wages paid by the external comparables is outweighed by the City's internal comparables; by the relatively high 11.59% total package cost of the Union's wage proposal; and by the generous disability program for off-duty illnesses and accidents. The disability program must be placed on the City's side of the balance scale because this benefit is not paid in any other market comparable and because no other bargaining unit employees in Superior have it.

I conclude that the factors on the City's side of the scale outweigh the Union's need to catch up and that, as a result, the City's one-year wage proposal of 3% should be adopted over the Union's two-year offer. This result is consistent with the 3% across-the-board wage increases granted to all other unionized City employees in 2002 and it does not prevent the Union from seeking catch-up pay for 2003.

In light of the above, it is my

AWARD

That the City of Superior's proposal for a 3% wage increase effective January 1, 2002, be incorporated in the parties' 2002 collective bargaining agreement, along with all tentative agreements.

Dated at Madison, Wisconsin, this 26th day of April, 2003.

Amedeo Greco /s/

Amedeo Greco, Arbitrator