

IN THE MATTER OF THE INTEREST ARBITRATION
PROCEEDINGS BETWEEN

SUPERIOR FIRE FIGHTERS
I.A.F.F. LOCAL 74,

Union,

and

ARBITRATOR'S AWARD
Case 199, No. 65501
MIA-2709
Decision No. 31705-A

CITY OF SUPERIOR

Employer.

Arbitrator: Jay E. Grenig

Appearances:

For the Employer: Frog Prell, Esq.
City Attorney

For the Union: Patrick Kilbane
5th District Field Service Representative

I. BACKGROUND

This is a matter of final and binding interest arbitration for the purpose of resolving a bargaining impasse between the City of Superior ("City" or "Employer") and Superior Fire Fighters Local 74 ("Union"). The City is a municipal employer. The Union is the exclusive collective bargaining representative of fire fighter personnel in the employ of the City.

On January 18, 2006, the Union filed a petition requesting the WERC to initiate arbitration pursuant to Wis. Stats. § 111.70(4)(cm)(6). A member of the WERC's staff

conducted an investigation, finding that the parties were deadlocked in their negotiations. On May 23, 2006, the WERC Investigator transmitted the parties' final offers to the WERC. On June 7, 2006, the WERC certified that the investigation was closed and submitted a list of arbitrators to the parties. The parties selected the undersigned to resolve their dispute.

A hearing was conducted on October 3, 2006, in Superior, Wisconsin. Upon receipt of the parties' briefs, the hearing was declared closed on November 8, 2006.

II. FINAL OFFERS

A. EMPLOYER

All Tentative Agreements reached to date (see Page 4, attached).

PROPOSAL 6 Standardize employee health/dental contribution rate for single plan participants to contribute 5%.

Article 16 – Insurances

a) Health/Dental Insurance: Effective April 1, 1998 the City modified the health plan as defined by the City's Insurances Committee; and effective January 1, 1999, the City added dental insurance and implemented a three-tiered rate structure at the 95% rate for family or employee plus spouse/child children,; and 100% single plan.

In addition to the salary schedule, for employees hired prior to February 1, 2004, the Employer shall pay the monthly premium of each member of the bargaining unit employee's health/dental insurance plan *as follows*:- ~~The Employer's contribution shall be one hundred percent (100%) of the premium for employees carrying single health/dental insurance.~~ The Employer's contribution for employees carrying family health/dental insurance, or employee and spouse or employee and child/children, *or single health/dental* insurance, shall be ninety-five percent (95%) of the premium.

For employees hired on or after February 1, 2004, the City shall pay 90% of the family plan premium or employee plus one/dependent plan and 95% of the single plan premium.

PROPOSAL 8 Three Year Agreement; Wage Increase.

Wage Increases (calculated on top Step of Fire Fighter, Motor Pump Operator, Fire Captain):

1/1/06 2.0%

1/1/07 2.0%

1/1/08 2.0% *If the State lifts the property tax levy limit freeze the general wage increase would be 2.5% effective 1/1/08*

PROPOSAL 9 Increase Clothing Allowance.

Article 13 - Clothing Allowance

In addition to the salary schedule, each member of the bargaining unit shall receive a clothing allowance of ~~Twenty-five Dollars (\$25.00) per month~~. The clothing allowance shall be paid in a lump-sum payment of Three Hundred *and Twenty-Five* Dollars (\$300*25.00*) for **2006 and Three Hundred and Fifty Dollars (\$350.00) for 2007 and thereafter which will be received** on or before February 28 of each year of this Agreement. . .

PROPOSAL 10 Retain Health Plan Structure for the Term of the Contract

Appendix C - Health Insurance

For the term of the contract, from 1/1/06 through 12/31/08, the City agrees that there will be no reduction in the level of health benefits and the benefit structure shall remain at the level of benefits effective 1/1/05.

PROPOSAL 11 Equalize Longevity with Other Protective Service Longevity Scale

Appendix A

<u>Longevity Pay - 56 hour workweek:</u>	<u>Longevity Pay – 40 hour work week</u>
after 5 years of service \$0 .10/hour	after 5 years of service \$0.14/hour
after 10 years of service \$0 .13/hour	after 10 years of service \$0.17/hour
after 15 years of service \$0 .15/hour	after 15 years of service \$0.20/hour
after 20 years of service \$0.17/hour	after 20 years of service \$0.2324/hour
<i>after 25 years of service \$0.19/hour</i>	<i>after 24 years of service \$0.27/hour</i>

PROPOSAL 12 Add Ability to Contribute Vacation Hours to Vantage-Care Annually.

Article 18 - Conversion of Unused Sick Leave or Vacation upon Retirement

b) Annual Conversion of Accrued Vacation Pay. ~~Bargaining unit members working an average of fifty six (56) hours per week may annually~~

~~convert six (6) shifts of vacation pay into an after tax contribution for additional Group Health Insurance Credit.~~

~~Bargaining unit members working an average of forty (40) hours per week may annually convert six (6) shifts of accrued vacation into an after tax contribution for additional Group Health Insurance Credit.~~

~~Any employee tax liability for annual conversion of vacation is the responsibility of the employee.~~

At the end of the calendar year after which the probationary period of one year is completed, an employee is eligible to convert vacation days to VantageCare. The employee must first carry over 3 days of vacation (72 hours) to use in the following calendar year before they can convert any days, which would otherwise be lost, up to 72 hours. The value deposited into VantageCare is determined by multiplying the number of hours of vacation by the base hourly rate of pay (excluding longevity) at the time of conversion.

Add description to retirement paragraph:

Conversion of Accrued Vacation at Retirement: Bargaining unit members, upon retirement, will deposit any additional unused accrued vacation into the ICMA VantageCare plan. . .

PROPOSAL 13 Add ability to come back to City Medicare Supplement Plan

Article 18 - Conversion of Unused Sick Leave or Vacation upon Retirement

Add new paragraph under (c):

Retirees or spouses of retirees who have left the health plan coverage of the City may return to the City's insured medicare supplement plan of their choice at any time by filing an application with the medicare supplement plan provider, complying with the plan requirements at the time of filing and paying 100% of the premiums required.

PROPOSAL 14 Provide Chief ability to select light duty work shift.

Appendix B- City of Superior Fire Department Return-to-work Policy

D. Return to Work: This step will:

- 1) Set the employee's work schedule.

The schedule will be set at a time the employee can perform the tasks available. Employees in the Fire Department can choose to be assigned to the day shift or their regular shift of 24 hours on, 48 hours off *if the light duty assignment is less than three calendar weeks. If the light duty assignment will be greater than three calendar weeks, the Chief will assign the work shift.*

B. THE UNION

I. WAGES

2% general wage increase effective July 1, 2006.

2% general wage increase effective December 31, 2006.

2% general wage increase effective July 1, 2007.

2% general wage increase effective December 31, 2007.

****(percentage increase to be added to top step prior to step calculation)

II. Article 16 - Insurances

a) Health/Dental Insurance:

In addition to the salary schedule the Employer shall pay the monthly premium of each member of the bargaining unit employee's health/dental plan as follows:

For employees hired prior to February 1, 2004 the Employer's contribution to family plan, employee plus one dependant, or single plan coverage shall be ninety-five percent (95%) of the premium.

***Change will be effective upon date of voluntary settlement or arbitration award ***

For employees hired on or after February 1, 2004, the **Employer** shall pay *ninety percent* (90%) of the family or employee plus one dependant plan premium, and *ninety-five* (95%) of the single plan premium.

III. Article C - Clothing Allowance

In addition to the salary schedule, each member of the bargaining unit shall receive a clothing allowance. The clothing allowance shall be paid in a lump-sum payment of three hundred *twenty-five dollars*

(\$325.00) for 2006 and three hundred fifty dollars (\$350.00) for 2007 and thereafter which will be received on or before February 28 of each year of this Agreement.

IV. Article 16 – Insurances (LANGUAGE TO BE ADDED**)**

b) The City of Superior shall designate the carrier for the employee’s health/dental plan, but in changing carriers, the City must maintain coverage at levels equal to or better than the current coverage. In no case will covered employees or dependants lose coverage as a result of changing insurance carrier.

c) Should insurance rates reflect an increase during or at the termination of the insurance carrier contract, it is understood and agreed that the City’s participation shall not change unless and until such time as changes are negotiated or agreed upon between the parties.

V. Appendix A (LANGAUGE TO BE ADDED**)**

<u>Lonevity Pav - 56 hour workweek:</u>	<u>Longevity Pay - 40 hour</u>
<u>workweek:</u>	
<i>After 25 years of service \$0.19/hour</i>	<i>after 25 years of service</i>
	<i>\$0.27/hour</i>

VI. Article 18 - Conversion of Unused Sick Leave or Vacation upon Retirement

b) Annual Conversion of Accrued Vacation Pay:

At the end of the calendar year after which the probationary period of one year is completed, an employee is eligible to convert vacation days to VantageCare. The employee must first carry over 3 days of vacation (72 hours) to use in the following calendar year before they can convert any days, which would otherwise be lost, up to 72 hours. The value deposited into VantageCare is determined by multiplying the number of hours of vacation by the base hourly rate of pay (excluding longevity) at the time of conversion.

Article 18 - Conversion of Unused Sick Leave or Vacation upon Retirement (Cont.)

****Add description to retirement paragraph:**

Conversion of Accrued Vacation at Retirement: Bargaining unit members, upon retirement, will deposit any additional unused accrued vacation into the ICMA VantageCare plan . . .

****Add new paragraph under (c):**

(c) Retirees or spouses of retirees who have left the health plan coverage of the City may return to the City's insured medicare supplement plan of their choice at any time by filing an application with the medicare supplement plan provider, complying with the plan requirements at the time of filing and paying 100% of the premiums required,

III. STATUTORY CRITERIA

111.70(4)(cm)

. . .

7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

- a. The lawful authority of the municipal 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 the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost of living.

h. The overall compensation presently received by the municipal 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.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. 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

A. THE UNION

1. Wages

The Union believes its wages are severely lagging compared to fire fighters in comparable cities. The Union believes the most accurate reflection of the wages received by the fire fighters in Superior and the comparable cities is the base plus longevity rate. Because additional duties performed by fire fighters in the comparable cities vary, the Union says these additional wages must be reviewed separately as part of a total package of compensation.

The Union asserts that the base wages exclusive of longevity of Superior fire fighters are significantly behind the average of the wages paid to the fire fighters in the comparable cities. The Union also says this disparity continues to grow by approximately 1 to 1.5 %. The Union acknowledges that in 2005 the disparity closed somewhat with respect to a base wages for a fire fighter with one-year seniority.

The Union points out that the average longevity payments for fire fighters in Superior lags behind those in the comparable municipalities. With respect to a comparison of the maximum wages rates inclusive of longevity, the Union says that the wages of Superior fire fighters are significantly behind the wages of the fire fighters in the comparable cities in all classifications.

The Union contends that five fire fighters have left the Superior Fire Department within the last ten years to work for the Duluth Fire Department. Although Duluth is not a comparable community, the Union asserts that its effect as a neighboring city with full-time fire fighters who are paid significantly higher wages cannot be ignored.

The Union asserts there are significant pay disparities between fire fighters and police officers in Superior. It notes that a police sergeant with 20 years of service has an annual salary approximately \$4,526 higher per year than a 20-year fire captain in 2006 and \$3,632 higher in 2007.

The Union does not include the specialty pay in its wage comparisons because of differences between the duties and compensation of specialists in the comparable communities. If the City wants to include specialty pay in their comparable data, the Union contends the City has the responsibility to include the specialty pay wage rates for the comparable cities as well. The Union says the City must also compare similar duties and responsibilities associated with the specialty pay for duties that are common to all comparable cities.

The Union also argues the City's failure to add longevity to the wages for comparisons is a contentious issue. The Union believes inclusion of the longevity payments to the base wages produces the most accurate comparisons. According to the Union, a comparison of longevity payments demonstrates how drastically behind the Superior fire fighters are.

With respect to the City's concern regarding compaction of captain wages and those of battalion chiefs, the Union says the obvious reason is that the battalion chiefs' wages are behind the average of the comparable cities. On the other hand, the Union also recognizes that battalion chiefs work a minimum of 18 days of overtime per year—a value of approximately \$11,000.

2. Light Duty

The Union explains that prior to March 29, 1989, bargaining unit employees off work due to temporary disability were not required to report to work for light duty even if

they were capable of performing light duty tasks. The City sought to implement a light duty policy as a result of its being informed by its insurance carrier that its worker's compensation insurance was being terminated because of the absence of such a policy. The unilateral implementation resulted in a 1989 arbitration decision holding that the City could not unilaterally implement a policy requiring employees on light duty to actually report for work.

As a result of the arbitration decision, the parties negotiated and agreed to the current Return-to-Work Policy and included it in the collective bargaining agreement. The Union notes that the present policy permits bargaining unit members to choose whether they will work a five-shift, forty-hour work week or a fifty-six-hour work week. The Union stresses that the Employer is not sure what impact its proposal will have on the overtime wages paid in accordance with the Fair Labor Standards Act. The Union asserts that the negative financial impact that will be felt by bargaining unit members if the Chief moves them from their 56-hour shift schedule to the 40-hour work week outweighs any efficiencies the Chief might achieve by having them perform the work of an assistant chief or a clerical worker.

3. Health Insurance

The Union says that it has proposed the same language as is used in the two AF-SCME contracts. Acknowledging there had been grievances regarding this language, the Union says only one of the unions has filed grievances and then only one union member. The Union claims its language would allow for an improvement in coverage if the City were to change carriers. According to the Union, the language proposed by the City says nothing about the City's ability to change carriers and locks the City into providing the same level of benefits with no ability for improvement.

4. Duration of Contract

The Union declares it is very concerned about the three-year duration of the City's final offer and the impact of it upon the ability of the Union to bargain collectively with the City. The Union says it is unknown whether the state legislature will continue to leave the levy cap in place. The Union asserts that removal of the levy cap would have an enormous impact on the City's ability to budget without such a restriction and could have an equally enormous impact on the course of negotiations with the fire fighters. The Union claims that under its offer, whether the levy cap is removed or not, the parties will have the ability to negotiate under the circumstances in place at the time. The Union contends this is a fair and reasonable way for the parties to collectively bargain a successor agreement.

B. THE EMPLOYER

1. Wages

The Employer acknowledges that the wages for the four job classes covered by the collective bargaining agreement fall short of the earnings of fire fighters in the nine comparables. However, the Employer asserts that the Union fails to recognize the generous holiday and vacation pay, the above-average uniform allowances, a unique disability leave benefit, and the fact there is no minimum requirement in the city for holding an EMT certification. The Employer points out that the disability benefit allows a sick or injured fire fighter to miss up to 93 work shifts without losing any wages or compensation regardless of the nature of the illness or injury.

With respect to the Union's comparing the Superior fire fighters with those in Duluth, Minnesota, the Employer notes that there is no reference to Duluth as an appropriate comparable market in the parties' collective bargaining agreement. Other than geographic proximity, the Employer asserts that there is little similarity between Superior and Duluth. The Employer relies on the Fire Chief's testimony that the City has lost no fire fighters to other employment in the last five years.

The Employer argues that the approximate maximum wage rate for comparing with the nine comparable cities is the top step of the specialist range. It points out that over one third of the City's fire fighters perform a specialist function.

It is the Employer's position that an internal wage comparison provides a more meaningful analysis than that offered by a study of external comparables. The Employer says there has been demonstrated consistency in internal settlements percentages since 1998. The Employer notes that the Union's wage proposal would result in significant compaction within the Fire Department as a fire battalion chief would out earn a fire captain by a mere \$24 per year. The Employer contends this would reduce any incentive for promotion and hamper the Department's ability to recruit highly capable and highly motivated personnel to supervisory positions.

According to the Employer, its proposal positions the Union employees very well when compared to other City employees. The Employer says that its proposal has an entry-level fire fighter out-earning an entry-level police officer in the years 2006-2008. In addition, the Employer says its proposal places the Union's fire captain specialists in a position to out earn their master detective counterparts during the lives of their respective contracts. With respect to the Union's comparison of police sergeants with fire captains, the Employer states that a police sergeant is a non-union supervisor position more comparable to the non-union fire battalion chief.

With respect to the economic condition of the City, the Employer asserts that, while Superior taxes its residents at 97% of the average municipal tax rate in Wisconsin, the City's per capita income is 81% of the statewide average. The Employer also points to the State's drastic cuts to shared revenue and its freeze on local property tax levies.

Without inflationary increases in shared revenue funding, the Employer asserts that it must make up for budgetary gaps exceeding a million dollars annually to maintain service levels and to meet its payroll. The Employer observes that the city's tax levy has increased an average of 2.6% per year over the last year while intergovernmental revenue has increased by only 1.4%. During this period Fire Department expenditures have increased at an average rate of 3.4% per annum while cultural and recreational expenditures have declined an average .2% per year. The Employer explains that its proposal mirrors the City's anticipated increases in revenue and expenditures in upcoming years—an average increase of 2% per year for the next three years.

The Employer has projected an increase in health costs in 2007 and 2008 of 8.5% each year. The Employer says that, in an effort to keep highly qualified personnel and to continue coverage at levels to which the employees have become accustomed, the City has not sought to pass any of these expenses on to its fire fighters. According to the Employer, its proposal would effect a 3.1% annual increase to the fire fighters' overall compensation package—an increase that is significantly higher than the 2.1% average annual increase in revenue that the City has realized in the past eight years.

With respect to the Consumer Price Index (CPI), the Employer says that the CPI has always served as a guide in comparing the City's budget to inflation in general. However, the Employer asserts it has become less and less important as a guide over the last few years because the City's revenue simply does not keep pace with the inflationary rise in expenditures.

2. Light Duty

The Employer explains that it has proposed an amendment to the light duty language that would allow the Fire Chief to assign shifts to fire fighters on light duty. The Employer relies on the Employer's testimony that his ability to direct a light duty fire fighter from the usual shift (24 hours on and 48 hours off) would be consistent with the management rights provision of the collective bargaining agreement which provides the City has the right to maintain efficiency of Fire Department operations. The present agreement provides that an employee on light duty can choose between the day shift or the regular shift of 24 hours on and 48 hours off. The Employer stresses that a great many of the temporary light duties are available during the eight-hour business work day, not during the fire fighter's normal shift. The Employer says that its proposal represents responsible management, enhancing the City's administrative efficiency without denying fire fighters the wages and benefits to which they are accustomed.

3. Health Insurance

With respect to its insurance proposal, the Employer explains that it was informed in 2005 that its third-party health plan administrator would not be able to provide service in Wisconsin effective January 1, 2006. With the participation of all bargaining units, the City says it pursued and ultimately contracted with its current third-party administrator—Health Partners. The change in administrators has resulted in significant savings. Ac-

ording to the Employer, the City cannot control the level or tier at which the administrator will cover a prescription or the inclusion or exclusion of certain health care providers in the covered network.

The Employer says that it has proposed language identical to the language in its current agreement with the law enforcement union that describes the City's commitment to provide the same level of health insurance benefits that have been provided to all city employees since January 1, 2005. The Employer claims that the language proposed by the Union is contained in the City's contracts with two other bargaining units and has caused significant confusion and a dramatic spike in the filing of grievances. According to the City, changes in an employee's co-pay obligations from the previous insurance administrator to the current provider have resulted in increased co-pays for some medications by virtue of a different tier designation. On the other hand, employees are often the beneficiaries of a reduced co-pay when the prescription in question falls into a more favorable tier. The Employer stresses that it cannot control the tier at which a prescription will be covered without a change in service providers. The Employer points out that it is not seeking to change its premium contribution levels.

4. Duration of Contract

The City asserts that its proposal for a three-year contract is the same as the duration of the contracts agreed to by the other three bargaining units. The Employer claims the Union's proposal for a two-year contract is designed to minimize the impact of its proposed 2% biannual wage increases. By proposing a contract that terminates on the last day of 2007, the Employer contends the Union is attempting to present an overall cost to the City for its proposed wage adjustment that nearly mirrors the overall cost under the City's proposal. The Employer points out that a two-year contract would likely have the parties back to the negotiation table within five to six months of the issuance of this decision. The Employer also submits that a longer contract with the Union, particularly in light of the three-year contracts currently in effect with all other bargaining units, will provide for greater stability in collective bargaining.

V. FINDINGS OF FACT

A. State Law or Directive (Factor Given the Greatest Weight)

In order for this factor to come into play, employers must show that selection of a final offer would significantly affect the employer's ability to meet State-imposed restrictions. *See Manitowoc School Dist.*, Dec. No. 29491-A (Weisberger 1999). The evidence discloses that the State has reduced shared revenue steadily since 2003. In 2004 the shared revenue to the City was reduced by \$500,000 and remains at that level. In 2006, the State imposed a limit on local property tax increases. These two events have had a significant affect on the revenue side of the City's budget and limit the allowable increases in expenditures to balance the budget.

**B. Economic Conditions in the Jurisdiction of the Municipal Employer
(Factor Given Greater Weight)**

This factor relates to the issue of the municipal employer's ability to pay. Ability to pay is not at issue in this proceeding. While the City has the financial ability to fund either offer, this does not mean it can do so without reducing or eliminating other budget programs. As noted above, the reduction in shared revenue coupled with the freeze on property tax rates has had a significant impact on the Employer's budget.

Additionally, the City taxes its residents at 97% of the average municipal tax rate in Wisconsin. This is all the more remarkable when one takes into consideration that the City's per capita income is only 81% of the average per capita income in Wisconsin. The City's tax levy has increased an average of 2.6% per year over the last eight years, while intergovernmental revenue has only increased 1.4%. The City has increased fines, penalties, license fees, and permit fees in an attempt to offset the shortfall in intergovernmental revenue. The City anticipates a 2% increase in revenue for 2006, a 2.2% increase in 2007, and a 1.7% increase in 2008 for an average annual revenue increase of 2.0% during those three years.

C. The Lawful Authority of the Employer

There is no contention that the Employer lacks the lawful authority to implement either offer.

D. Stipulations of the Parties

While the parties were in agreement on many of the facts, there were no stipulations with respect to the issues in dispute. They have, however, reached agreement on a number of issues.

E. The Interests and Welfare of the Public and the Financial Ability of the Unit of Government to Meet these Costs

This criterion requires an arbitrator to consider both the employer's ability to pay either of the offers and the interests and welfare of the public. The interests and welfare of the public include both the financial burden on the taxpayers and the provision of appropriate municipal services. The public has an interest in keeping the Employer in a competitive position to recruit new employees, to attract competent experienced employees, and to retain valuable employees now serving the Employer. Presumably the public is interested in having employees who by objective standards and by their own evaluation are treated fairly. What constitutes fair treatment is reflected in the other statutory criteria.

F. Comparison of Wages, Hours and Conditions of Employment

1. Introduction

The purpose in comparing wages, hours, and other conditions of employment in comparable employers is to obtain guidance in determining the pattern of settlements among the comparables as well as the wage rates paid by these comparable employers for similar work by persons with similar education and experience.

2. External Comparables

One of the most important aids in determining which offer is more reasonable is an analysis of the compensation paid similar employees by other, comparable employers. Arbitrators have also given great weight to settlements between an employer and its other employees. *See, e.g., Rock City (Deputy Sheriffs' Ass'n)*, Dec. No. 20600-A (Grenig 1984). In Appendix C of their collective bargaining agreement, the parties agreed that the external comparables are Beloit, Eau Claire, Fond du Lac, La Cross, Manitowoc, Marshfield, Sheboygan, Stevens Point, and Wausau.

The evidence shows that the City fire fighters have historically received wages below the average of the comparables. The City's proposal would increase the difference and the Union's would decrease the difference. As Arbitrator Greco found in the previous interest arbitration, City fire fighters who suffer off-duty injuries or illnesses have the most liberal short-term disability program of any comparable.

There is no basis for comparing the wage rates in Duluth, Minnesota, with the Employer's. Although Duluth is in geographic proximity to Superior, the parties have not agreed to use it as a comparable municipality. In addition, the Union has not shown that Duluth is operating under the same fiscal constraints as those imposed on the City by the State of Wisconsin.

3. Internal Comparables

Generally, internal comparables have been given great weight with respect to basic fringe benefits. *Rio Community School Dist. (Educational Support Team)*, Dec. No. 30092-A (2001 Torosian); *Winnebago City*, Dec. No. 26494-A (Vernon 1991). Significant equity considerations arise when one unit seeks to be treated more favorably than others. Ordinarily, employers try to have uniformity of fringe benefits for all their bargaining units because it avoids attempts by bargaining units to whipsaw their employers into providing benefits that were given to other bargaining units for a very special reason. *City of Grafton*, Dec. No. 51947 (Rice 1995). Compensation of nonunionized employees is of less persuasion in an interest arbitration. An employer can unilaterally make changes for nonunionized employees, while an employer must bargain those changes for unionized employees. *See Columbia County (Professionals)*, Dec. No. 28987-A (Krinksky 1997).

The record shows that the three other bargaining units—the police union and the two AFSCME unions—have agreed to three-year contracts providing for 2% wage increases each year. Non-union City employees received a 2% wage increase in 2006. The evidence indicates there has been significant consistency in voluntary settlement percentages in the City.

The City’s proposal would result in an entry-level fire fighter wage higher than the entry-level police officer. Fire captain specialists would out earn master detective counterparts in the City.

The City police union has agreed to language relating to health insurance identical to that proposed by the City here. The two AFSCME unions agreed to language identical to that proposed by the Union.

G. Changes in the Cost of Living

The governing statute requires an arbitrator to consider “the average consumer prices for goods and services, commonly known as the cost of living.” While a number of arbitration awards suggest that changes in the cost of living are best measured by comparisons of settlement patterns, such settlements, do not reflect “the average consumer prices for goods and services.” Despite its shortcomings, the Consumer Price Index (“CPI”) is the customary standard for measuring changes in the “cost of living.” Settlement patterns may be based on a number of factors in addition to changes in the “average consumer prices for good and services.” In considering changes in the cost of living, it should be kept in mind that the CPI also includes health care costs—an item negotiated by the parties as an item separate from wages. Accordingly, the impact of the CPI is somewhat mitigated by the Employer’s picking up a substantial portion of the increased costs of health insurance.

H. Overall Compensation Presently Received by the Employees

In addition to their salaries, employees represented by the Union receive a number of other benefits. While there are some differences in benefits received by employees in comparable employers, it appears that persons employed by the Employer generally receive benefits equivalent to those received by employees in the comparable employers.

The disability benefit—light duty—received by City fire fighters is more liberal than the disability benefits received by fire fighters in any of the comparable municipalities. The disability leave benefit allows a sick or injured fire fighter to miss up to 93 work shifts without losing any compensation, regardless of the nature of the illness or injury—work-related or not work-related. There is no cap on this benefit; it can be used more than once in a year if there is more than one injury or illness. Over 1,700 disability hours have been used by nine City fire fighters since January 2002. The disability leave benefit means that a City fire fighter does not have to use sick leave for a single extended injury or illness exceeding 60 work hours (five shifts).

The disability benefit is expensive because fire fighters on light duty never leave the fire house on emergency calls, they are not counted for the purpose of meeting the Fire Bureau's minimum manning requirements, and replacements must be paid overtime to fill in for them.

The City's uniform allowance is also above the average of that provided by the comparables.

I. Changes During the Pendency of the Arbitration Proceedings

The parties have not brought any changes during the pendency of the arbitration hearings to the Arbitrator's attention.

J. Other Factors

This criterion recognizes that collective bargaining is not isolated from those factors comprising the economic environment in which bargaining takes place. *See, e.g., Madison Schools*, Dec. No. 19133 (Fleischli 1982). Good economic conditions mean that the financial situation is such that a more costly offer may be accepted and that it will not be automatically excluded because the economy cannot afford it. *Northcentral Technical College (Clerical Support Staff)*, Dec. No. 29303-B (Engmann 1998). *See also Iowa City (Courthouse and Social Services)*, Dec. No. 29393-A (Torosian 1999) (conclusion that employer's economic condition is strong does not automatically mean that higher of two offers must be selected or, conversely, a weak economy automatically dictates a selection of the lower final offer).

The economic condition of the City has been discussed above under other statutory criteria.

VI. ANALYSIS

A. Introduction

While it is frequently stated that interest arbitration attempts to determine what the parties would have settled on had they reached a voluntary settlement (*See, e.g., D.C. Everest Area School Dist. (Paraprofessionals)*, Dec. No. 21941-B (Grenig 1985) and cases cited therein), it is manifest that the parties' are at an impasse because neither party found the other's final offer acceptable. Realistically, if the parties reached a negotiated settlement, the final resolution would probably be the result of compromise and the outcome would be contract provisions somewhere between the two final offers here. The arbitrator must determine which of the parties' final offers is more reasonable, regardless of whether the parties would have agreed to that offer, by applying the statutory criteria.

B. WAGES

In the prior interest arbitration award, Arbitrator Greco recognized that the City fire fighters, on the average, receive lower wages than their counterparts in comparable

communities. The Union's offer would improve the City's wages in comparison with the comparables while the City's maintains the disparity. The Union has not established the need for a wage catch-up here, failing to show there has been a significant erosion in the City's comparative standing.

In *Wittenberg-Birnamwood School District (Support Staff)*, Dec. No. 30185-A (5/22/02), Arbitrator Dichter wrote:

The wages and benefits were set in this District through negotiations. The parties knew full well how the District compared with others. They established a relationship when compared to the others during those negotiations. Why should I change what the parties did in negotiation? Without evidence that the passage of time has eroded the condition of the District more than has been true in other Districts in the Athletic Conference, I will not treat this District any differently than how the employees in the other districts were treated during their negotiations.

In *City of Algoma (Police)*, Dec. No. 29399-A (Dichter 1998), Arbitrator Dichter stated:

This Arbitrator and other arbitrators have noted in numerous cases, that where wage increases are the product of voluntary negotiations, past wage comparisons are not significant. The parties chose to put themselves where they did.

The Employer has never agreed or guaranteed that it would achieve market parity in employee wages. The evidence also shows that in past negotiations the parties always reached voluntary settlements that did not bring bargaining unit members up to the market parity sought by the Union.

Mitigating the disparity between City wages and wages in the comparable municipalities is the contract's provision of generous benefits to City fire fighters—particularly the short-term disability plan providing the City fire fighters with a generous light-duty program for work-related and nonwork-related injuries and illnesses—a benefit not provided by any of the comparable municipalities.

The Union's proposal for a wage increase the last day of the contract year does not, in itself, make the Union's wage proposal unreasonable. Wage settlements not infrequently include provisions giving a wage "lift" at the end of the contract period, representing a compromise mitigating the financial impact on the Employer and still providing employees with an appropriate wage increase. While such a proposal has an impact on the succeeding contract, a wage increase in the first, second, or third year of a contract will have a similar impact.

Internal comparables clearly favor the Employer. The two AFSCME bargaining units and the police bargaining units all agreed to one-year contracts with 2% annual

wage increases. The Union is seeking a wage increase in excess of that paid to all other City employees for the years in question.

While the external comparables slightly favor the Union, the internal comparables and the City's problems in dealing with tax levy limits and shared revenue reductions make the City's wage offer slightly more reasonable than the Union's.

C. LIGHT DUTY

The City's light-duty benefit is a generous benefit not enjoyed by fire fighters in comparable communities. The light-duty benefit in question mandates light duty for City fire fighters regardless of the nature of the illness or injury. The light-duty benefit means that City fire fighters do not have to use sick leave for a single extended injury or illness exceeding 60 work hours (five shifts).

The Employer is not seeking to take away this benefit—a benefit of particular importance to fire fighters who work under the most physically demanding and hazardous circumstances on a frequent basis. It is only seeking to modify the benefit to permit the Fire Chief to schedule a fire fighter on light duty so as to get some beneficial services for a fire fighter on light duty who is receiving full compensation. As presently structured, fire fighters on light duty work a 24-hour shift of which two-thirds is outside the regular work day. These fire fighters on light duty do not leave the fire house and do not respond to fire calls.

It only seems reasonable that a City employee who is on light duty and is receiving full compensation also provide the City and its taxpayers with beneficial services. This is particularly important here given the financial constraints under which the City is operating while still being required to provide essential services.

As presently structured fire fighters on light duty are not providing services in return for their full compensation for approximately two-thirds of their hours. The Employer's proposal would remedy this situation while still preserving the light-duty benefit. The Employer's proposal is consistent with the principal that an employee on light duty and receiving full compensation should perform work that has some benefit to the employer. There is no significant need for a fire fighter who is on light duty and cannot respond to emergency calls to spend the night in the fire house at full pay.

While it is possible that there may be some diminution of overtime, the Employer is under no obligation to provide overtime where overtime is not needed. Additionally, the Employer is also paying additional overtime to the fire fighter or fire fighters needed to maintain manning levels while the injured or ill fire fighter is on light duty. If payment of overtime was the result of the performance of meaningful duties, then there would be more justification for paying overtime other than maximizing employee income.

The Employer's proposal recognizes that changing to a five-day, eight-hour shift from a 24-hour shift may have an impact on employees on light duty by proposing that

the authority of the Fire Chief to make such assignments only applies where a fire fighter has already been on light duty for three weeks (in addition to the 60 hours of sick leave).

The Employer's proposal with respect to this issue is more reasonable than the Union's.

D. HEALTH INSURANCE

Comparisons are of little assistance with the parties' proposals on this issue. The police union has accepted the Employer's proposed language and the two AFSCME units have included the language in the Union's proposals in their contracts. The City has articulated persuasive arguments in support of its proposals given the realities of managed care. The Employer cannot control at least two things determined by the plan administrator: (1) the tiering of prescription medications, and (2) the providers in the preferred provider plans. Prices for both of these categories are determined as a result of the administrator's negotiations with providers. With respect to prescription medications, some may have higher copays than previously and some may have lower copays.

Keeping in the mind the problem facing employees and employers in responding to constantly increasing health insurance costs, the Employer's final offer with respect to this issue is slightly more reasonable than the Union's in that it maintains benefits while attempting to control costs.

E. DURATION OF CONTRACT

The Union's proposed two-year contract duration is inconsistent with the three-year contract duration agreed to by the other three bargaining units. As recognized by Arbitrator Greco, a longer contract may be preferable to a shorter contract because it provides for greater stability in collective bargaining. If the Union's proposal were accepted, the parties would be starting negotiation on a new contract in just a few months. The Employer's proposal on this issue is slightly more reasonable than the Union's.

F. CONCLUSION

The Arbitrator is required to select one party's entire final offer; the Arbitrator cannot choose some provisions in one offer and some provisions in the other offer. Nor can the Arbitrator modify or edit final offers. Clearly, a negotiated agreement in which the parties select the best individual offers, modify them so they are mutually acceptable, and work together to clarify the language would be preferable to imposing one final offer on the parties. Unfortunately, the parties were unable to reach a negotiated settlement and it was necessary to have the matter resolved in arbitration.

Applying the statutory criteria to the parties' final offers, it appears for the reasons set forth above that the Employer's final offer is more reasonable than the Union's.

VII. AWARD

Having considered all the applicable statutory criteria, all the relevant evidence and the arguments of the parties, it is concluded that the City's final offer is more reasonable than the Union's final offer. The parties are directed to incorporate into their collective bargaining agreements the Employer's final offer.

Executed, this tenth day of December, 2006.

Jay E. Grenig