

IN THE MATTER OF THE ARBITRATION BETWEEN

THE RICE LAKE PROFESSIONAL)	WISCONSIN EMPLOYMENT
FIRE FIGHTERS ASSOCIATION,)	RELATIONS COMMISSION
LOCAL 1793 OF THE INTERNATIONAL)	CASE 77
ASSOCIATION OF FIRE FIGHTERS,)	NO. 65538
)	MIA 2713
)	DECISION NO. 31756-A
)	
)	
)	
Union,)	
)	
and)	
)	
THE CITY OF RICE LAKE,)	DECISION AND AWARD
)	OF
Employer.)	ARBITRATOR

APPEARANCES

For the Union:

Patrick A. Kilbane
Fifth District Field
Representative,
International Association
of Fire fighters
6847 East County Road N
Milton, WI 53563

For the Employer:

Richard J. Ricci
Weld, Riley, Prens
& Ricci, S.C.
Attorneys at Law
3624 Oakwood Hills Parkway
P.O. Box 1030
Eau Claire, WI 54702-1030

On January 19, 2007, in Rice Lake, Wisconsin, a hearing was held before Thomas P. Gallagher, Arbitrator, who was selected by the parties under the provisions of the Municipal Employment Relations Act to resolve collective bargaining issues about which the parties are at impasse. The parties' post-

hearing briefs were received by the arbitrator on March 2, 2007; their reply briefs were received on April 7, 2007; and the last of their post-hearing evidentiary materials was received on May 4, 2007, at which time, the record was closed.

BACKGROUND

The City of Rice Lake (the "Employer" or the "City") is located in northwest Wisconsin. The Union is the collective bargaining representative of the non-supervisory employees of the Employer who work in the City's Fire Department (the "Department"), in the classifications, Lieutenant, Pump Operator and Firefighter-EMT. The Union and the Employer have been parties to a series of labor agreements establishing the terms and conditions of employment of these employees. The labor agreement under which the parties are now operating, pending resolution of the present impasse, has, by its terms, a duration from January 1, 2004, through December 31, 2005. Hereafter, I refer to that agreement as the "current labor agreement."

The parties have successfully negotiated most of the terms of a new labor agreement, the duration of which they have agreed will be from January 1, 2006, through December 31, 2007. They have not, however, been able to resolve their differences with respect to several provisions of their new labor agreement, which I describe below.

On August 10, 2006, after mediation, the Wisconsin Employment Relations Commission (the "Commission") ordered that the parties resolve their impasse through final and binding arbitration in accord with Section 111.77(4)(b), Wis. Stat.

On September 7, 2006, the Commission appointed me as the sole arbitrator for the purpose of issuing a final and binding award resolving the parties' impasse. The Commission limited my jurisdiction to the selection of either the entire final offer of the Union or the entire final offer of the Employer.

In making this decision and award, I have considered the following "factors," which Section 111.77(6), Wis. Stat., establishes as those that "the arbitrator shall give weight to" in resolving a bargaining impasse:

- (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 the costs.
- (d) Comparison of the wages, hours and conditions of employment of the municipal 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 and 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.

At the hearing, the Employer stipulated to three of the proposals included in the Union's final offer, which I set out below, verbatim:

ARTICLE VIII - INSURANCE

Revise the language referencing co-pays for drugs and office visits by deleting old dollar figures. The co-pays shall remain as follows:

Drug co-pays

Generic	\$ 5
Single-source	\$20
Multi-source brand	\$15

Office co-pays

\$25

Maintain the December 3, 2001 side letter of agreement and waiver.

NEW ARTICLE - DIRECT DEPOSIT

Upon ratification of a voluntary agreement or arbitration award:

All payroll and flex plan checks shall be direct deposited to a bank of the employee's choice.

SIGNATURE PAGE

Delete the PNC Chairman signature line.

In accord with the parties' stipulation, the new labor agreement shall incorporate these changes.

The Employer's Final Offer.

The Employer's final offer 1) would make a substantial change in the provisions of the current labor agreement that describe employees' entitlement to vacation and sick leave, 2) would add a new disability insurance benefit, and 3) would revise the current agreement's wage schedule.

I set out below the text of the Employer's final offer that would make these changes:

ARTICLE IV: VACATIONS AND ARTICLE V - SICK LEAVE

Delete Article IV - Vacations and Article V - Sick Leave effective 1/1/07 so that a new benefit for Personal Leave is created in their place with the following provisions:

ARTICLE IV: PERSONAL LEAVE. Effective 1/1/2007 firefighters working a 24-hour shift will earn personal leave at the rate of 20 hours per month (10 days per year). Such leave will be available for use as it is earned, for vacation and sick leave purposes, beginning

with the first full month of employment. Such fire-fighters will not accrue vacation leave or sick leave in addition to the accrual of personal leave. Personal leave may be taken by the employee for vacation subject to the following maximums per year:

<u>Completed Year of Service</u>	<u>Days of Vacation</u>
0	8
1	8
2	8
8 and thereafter	12

For those employees whose sick leave and vacation leave accrual exceeds 30 days on 1/1/2007, the City will "buy down" accrued hours in excess of 30 days at the employee's rate of pay calculated by the provisions of Article XVI. The leave in excess of 30 days will be divided into five equal installments, payable in 1/2007, 1/2008, 1/2009, 1/2010, and 1/2011. These days shall not be used in the calculation of end-of-the-year compensation for days in excess of 30. In lieu of cash payment, the employee may elect payment to a "deferred compensation" plan. Employees retiring during the "buy-down" period will have the option of continuing to receive the installments or being paid the balance owed in one lump sum.

Employees shall not be permitted to accrue and maintain more than 30 days of unused personal leave longer than 10 days after the end of the accrual cycle (10 days past their anniversary date). Unused personal leave in excess of 30 days will be paid to the employee at one-half of the regular rate of compensation.

For firefighters, a day's wages shall be computed by dividing their monthly wage by 22.

NEW ARTICLE - DISABILITY INSURANCE

Add New Section as follows:

The City agrees to pay 100% of the cost of disability insurance. The Association agrees that United Wisconsin Group will provide the coverage. The City may also change the insurance carrier to another provider or self-fund provided the insurance coverage under the new insurance carrier or self-funding is substantially equivalent to the current coverage.

APPENDIX A: BASE WAGES (MONTHLY)

Effective 1/1/06 increase all wages 1.5% ATB.
Effective 1/1/07 increase all wages 1.5% ATB.

The Union's Final Offer.

The Union's final offer would revise the current agreement's wage schedule, and it would continue all other provisions of the current labor agreement without change. Below, I set out the text of the Union's final offer that would make this change:

ARTICLE XII: WAGE SCALE

Revise the first paragraph to read as follows:

Effective January 1, 2006, all members of Local 1793 shall receive a base wage increase of 2.5% and effective January 1, 2007, a base wage increase of 3%. These increases are depicted in Appendix A.

Relevant Parts of the Current Labor Agreement.

Several provisions of the current labor agreement would be changed by adoption of the final offer of one party or the other. Thus, the Employer's proposal that Article IV provide for personal leave, useable for sick leave and vacation, expressly states that Articles IV and V of the current labor agreement, which I set out just below, are to be deleted:

Article IV: Vacations

Vacations are as follows:
Employees who have completed one (1) year of service [are] entitled to: 4 days of vacation.
Employees who have completed two (2) years of service [are] entitled to: 8 days of vacation.
Employees who have completed eight (8) years of service [are] entitled to: 12 days of vacation.
Employees who have completed fifteen (15) years of service [are] entitled to: 16 days of vacation.
Employees who have completed twenty (20) years of service [are] entitled to: 17 days of vacation.
Employees who have completed twenty-one (21) years of service [are] entitled to: 18 days of vacation.

Employees who have completed twenty-two (22) years of service [are] entitled to: 19 days of vacation. Employees who have completed twenty-three (23) years of service [are] entitled to: 20 days of vacation. Years of service shall mean from the original date of employment to the anniversary date and shall not mean calendar years.

For members working a 40 hour week, after completion of one year of service to the City they shall receive 5 days of vacation time consisting of 5 regularly scheduled days off at the regular rate of pay. Employees with 2 or more years of service are entitled to 10 regular days off at the regular rate of pay. Employees with 8 or more years of service are entitled to 15 regular days off at the regular rate of pay. Employees with 15 or more years of service shall be entitled to 20 regular days off at the regular rate of pay. Employees after twenty (20) years of service shall be entitled to one (1) additional regular work day off at the regular rate of pay for each year of service past twenty (20) years up to a maximum of four (4) additional days. In granting of vacations seniority shall be observed and vacations shall be taken with the approval of the Chief. Employees covered under this agreement have the option of taking vacation days one day at a time according to the procedure agreed to by the Association and the Fire Chief.

If, due to circumstances beyond the control of the employee, accrued vacation time cannot be taken in the year, at the end of the year the employee shall be paid a day's wages for each unused day of vacation.

Article V: Sick Leave

Employees covered by this agreement shall be granted sick leave at the rate of one day per month, beginning with the first month of employment, cumulative to a maximum of 120 days. Sick leave shall be taken only for legitimate illness and any abuse of sick leave may result in the suspension of the employee for a period of from one day to two weeks, depending on the seriousness of the abuse. The City reserves the right to send a member of the Health Department to the home of the ailing employee or to request a doctor's certificate as proof of illness. Time lost from accident outside the City employment shall be charged as sick leave and shall be paid for. Fire Department employees shall be charged for sick days only on actual scheduled work days, day for day.

Sick leave may be used for serious injury or serious illness of the employee's immediate family (parents, spouse, children). Time spent in such emergency leave shall be deducted from the employee's accrued sick leave.

A fire fighter who has accumulated 120 days of sick leave at the beginning of a calendar year may, at his/her discretion, be compensated for all unused sick leave hours in excess of 120 days at the end of the calendar year at the rate of one-half (1-2) times his/her regular rate of compensation. For fire fighters, a day's wages shall be computed by dividing their monthly wage by 22.

As noted, the Employer's proposal to substitute the new personal leave language for the current language of Articles IV and V would expressly delete those two articles. Presumably, Article XVI of the current labor agreement, which I set out below, would also be affected by adoption of the Employer's final offer:

Article XVI: Final Settlements

1. Regular Salary:
2. Vacation Time:
 - A. When an employee terminates employment the employee shall receive pay for all unused vacation time in the following manner:
 1. If the employee is entitled to 4 days of vacation pay 1/4 of the employee's monthly wage will be paid.
 2. If the employee is entitled to 8 days of vacation pay 1/2 of the employee's monthly wage will be paid.
 3. If the employee is entitled to 12 days of vacation pay 3/4 of the employee's monthly wage will be paid.
 4. If the employee is entitled to 16 days of vacation pay one month of the employee's monthly wage will be paid.
 - B. Vacation time is earned during the year preceding the year in which it is actually taken. Therefore, when an employee terminates employment, the employee shall receive pay for the unused portion of the vacation time earned during the previous year plus any vacation time earned in the year of termination.
3. Sick Leave:
 - A. Upon terminating employment with the City, the employee shall be paid for each day of accrued sick leave, up to a maximum of 90 days, based on a 22 day work month. This benefit shall not be available to an employee who is discharged with less than ten (10) years of service and was hired

after January 1, 1987. Days in excess of 90 will be paid at half rate, based on a 22 day work month.
 B. A day's wages shall be computed by dividing the monthly wage by 22. For employees after January 1, 1988, the daily wage rate for sick leave payout purposes shall be calculated as follows:

<u>Years of Service</u>	
10 or more	Average monthly wage of last 5 years of employment divided by 22
5 or more	Average monthly wage of last 3 years of employment divided by 22
Less than 5	Monthly wage at time of termination divided by 22

Article VII of the current labor agreement is entitled, "Work Day and Work Week." It defines the work day, thus:

The Fire Department is organized in two platoon (crew) system. One crew works one 24-hour day with the other crew working the next 24-hour day with a Kelly Day every six calendar days. Effective February 1, 1984, the work week consists of a 56 hour week. The work period for Fair Labor Standards Act purposes is twenty-four days [sic]. Fire Inspectors will either work a 24-hour day, 56 hour week OR an 8-hour shift, 40 hour week. Employees working a 24-hour shift must eat their meals at the station.

The following provisions of the current labor agreement are relevant to the parties' wage proposals:

Article XII: Wage Scale

Effective January 1, 2004, all members of Local 1793 shall receive a base wage increase of 2.0%; effective July 1, 2004, a 2.0% base wage increase and effective January 1, 2005, a 3% base wage increase. These increases are depicted in Appendix A.

Employees in the bargaining unit who have completed specialized training and have been certified as EMTs, HMTs, of CFIs shall receive a 1% base rate increase. No employee shall receive more than 1% over the base wage rate as a result of certifications. That is, multiple certifications will not result in increased compensation. . . . Said one percent (1%) shall be calculated using the base wages contained in Appendix A.

Appendix A of the current labor agreement establishes the following monthly wage rates for members of the bargaining unit

as of January 1, 2005 -- the rate they are being paid until an award issues in this proceeding:

Lieutenants	\$3,469.14
Pump Operator	3,374.42
Firefighter/EMT 1st Class	3,268.11
Firefighter/EMT	3,188.81
Firefighter/Probationary	2,925.24
Firefighter 1st 6 Months	2,807.33

Article X of the current labor agreement provides bargaining unit members with longevity pay, i.e., additional compensation for lengthy service, -- "1% of base wage" after completion of four years of service, "2% of base wage" after completion of seven years of service, "3% of base wage" after completion of ten years of service, "4% of base wage" after completion of thirteen years of service and "5% of base wage" after completion of sixteen years of service.

DECISION

Each of the parties proposes six cities as relevant for external comparison to show what other similar public employers pay firefighting personnel. The Employer proposes comparison with the following cities:

<u>City</u>	<u>2005 Population</u>
Portage	9,981
Tomah	8,798
Antigo	8,627
Ashland	8,531
Shawano	8,488
Rhineland	8,052
Average	8,746
Rice Lake	8,603

The Union proposes the following cities for external comparison:

<u>City</u>	<u>2006 Population</u>
Menomonie	15,730
Chippewa Falls	13,515
Merrill	10,190
Antigo	8,627
Ashland	8,531
Rhineland	8,052
Average	10,774

The Union argues 1) that the group it proposes is the same as the one used by Arbitrator Edward B. Krinsky in 2001 when the parties last used arbitration to resolve a bargaining impasse, 2) that the Employer proposed the use of this group to Krinsky during that arbitration, 3) that consistency from year to year should be the predominant factor in choosing comparable cities, 4) that two of the new cities proposed by the Employer, Tomah and Shawano, are not truly comparable because they have volunteer fire departments and 5) that, as Krinsky determined in the 2001 arbitration, Portage is not comparable because of its distance from Rice Lake.

The Employer argues that the three new cities in its proposed group -- Portage, Tomah and Shawano -- are more appropriate for comparison with Rice Lake because they are similar in population and tax base, whereas Menomonie, Chippewa Falls and Merrill each has a higher tax base and larger population. The Employer notes that the six cities now proposed for comparison were selected in 2002 at the conclusion of a study it conducted to determine appropriate cities comparable to

Rice Lake. It has used those cities in budgeting and negotiations since then. The Employer argues that, in addition to their similarity to Rice Lake in population and tax base, a primary factor appropriate to their selection is their similarity to Rice Lake as "service centers." Thus, the Employer argues that because Rice Lake is about fifty miles distant from the nearest city of similar or larger size, it serves about 80,000 people who live outside the City, but who impact the cost of municipal services. Consequently, the Employer argues its population of about 8,400 must pay disproportionate costs compared to cities that are not service-center cities. The Employer notes that, similar to Rice Lake, each of the six cities in its comparison group is at least forty-five miles distant from another city of equal or greater size.

The Employer argues that in recent years it has made a substantial effort to reign in its disproportionately high costs, achieving some progress in that goal, in an effort to provide relief to the City's taxpayers from the high cost of municipal services.

In considering external comparison of wage rates, I use the three cities common to the list proposed by each party -- Antigo, Ashland and Rhinelander. As the Employer argues, they are similar in size and tax base, and I accept the Employer's suggestion that they are similar in that they act as service centers to population living outside city-boundaries. As the Union, argues two of the cities in the Employer's list, Tomah and Shawano, cannot be used for wage comparisons because they

use volunteer firefighters. I consider the information from the other cities the parties propose for external comparison, Portage, Menomenie, Merrill and Chippewa Falls, but I give that information less weight 1) with respect to Portage, because of its distance from Rice Lake, and 2) with respect to Merrill, Menomenie, and Chippewa Falls (especially the latter two), because of their larger populations.

The Employer makes the following arguments in support of its final offer. Since 1997, the shared revenue received from the state has been declining, while the City's expenses have been increasing, commensurate with continued growth. Property tax levies rose substantially between 1996 and 2002 -- from \$2.4 million to \$4.5 million. The City's mill rate rose to 12 mills -- substantially above the average mill rate of 9 mills in the six cities in the Employer's comparison group.

In 2002, the City Council decided that it must adopt a program of fiscal restraint to reduce the tax burden on property within the City, and by 2006, the City's mill rate declined to 8.14 mills compared to an average of 7.97 mills in the cities in the Employer's comparison group. The City Council used several methods to achieve this reduction -- cutting costs, cutting services, delaying debt service, spending down the general fund balance and making temporary transfers from capital funds to the general fund. The City continues to be financially constrained in meeting its 2007 budget. The City Council has decided to reduce capital spending, to increase the tax levy for debt repayment and to hold employee wage increases to 1.5% per year for 2006 and 2007.

At the time of the hearing in this matter, interest arbitration proceedings were pending between the Employer and the unions representing its employees in the Streets Department, in the Police Department and in the Fire Department. Shortly after the hearing in this proceeding, awards issued in the proceedings between the Employer and the unions representing employees in the Streets Department and in the Police Department. In both cases, the arbitrator awarded the Employer's final offer. With those awards, the wage increases for all of the sixty-three employees other than the ten whose wages will be determined in this proceeding are set at 1.5% per year -- the same increases that the Employer proposes here in its final offer.

The Employer argues that I should adopt its final offer to preserve the internal wage pattern that covers its other sixty-three employees. In addition, the Employer argues that, at least since 1998, with few exceptions, all of its employees have received wage increases of substantially the same percentage each year. The Employer urges that this history of internally consistent wage increases should be given greater weight than external wage comparisons.

The Employer argues that external comparisons should be made of total compensation -- wages plus longevity increments. Ashland's longevity schedule increases pay by 1% after five years, by 2% after ten years, by 3% after fifteen years and by 4% after twenty years. Rhinelander's longevity schedule increases pay by \$10 per month after five years, by \$20 per month

after ten years, by \$30 per month after fifteen years, by \$40 per month after twenty years and by \$50 per month after twenty-five years. Antigo pays no longevity increments. The Employer presented information showing a firefighter's total annual pay including longevity after sixteen years of service -- where the Employer's longevity payments top out, (though those of Ashland and Rhinelander top out at twenty and twenty-five years):

<u>City</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Antigo	\$40,320	\$41,424	\$42,460
Ashland			
January 1	39,307	41,696	43,364
July 1	40,093		
Rhinelander			
January 1	39,693	40,480	41,018**
July 1	40,480		
Rice Lake	41,570*		
Employer's Offer		42,194	42,827
Union's Offer		42,610	43,888

* Includes 1% premium for specialty certifications

** This figure is derived from the Rhinelander contract for 2007, supplied by the Union, post-hearing. It results from a staggered increase -- 2% on January 1, 2% on July 1 and 2% on December 1. If the December 1 increase to \$3,484.26 per month were annualized -- a relevant consideration because that rate will be the presumed base for determining 2008 wages -- annual wages plus longevity at sixteen years would be \$42,171 for Rhinelander. In addition, the Rhinelander contract provides about \$63 per month for specialty certification (EMT). If that amount is added, the annual compensation at Rhinelander during 2007 is about \$41,775.

If this table showed total compensation after twenty and twenty-five years of service, Ashland and Rhinelander would rise slightly -- by 1% of base pay at Ashland, where longevity tops

out at twenty years, and by \$240 at Rhinelander where longevity tops out at \$50 per month after twenty-five years.

Similar tables for the other bargaining unit classifications, Pump Operator and Lieutenant, would show approximately the same relationship between the total of wages and longevity at Rice Lake and the total of wages and longevity at Ashland, Antigo and Rhinelander. Though the two Lieutenants of the Department fare slightly worse in the comparison than do the four Firefighters and the four Pump Operators, that difference is not sufficient to drive the selection of one final offer rather than the other.

With respect to the Employer's proposals to substitute personal leave and disability insurance for sick leave and vacation, the Employer makes the following arguments. In 1997, all employees of the Employer had sick leave and vacation benefits similar to those found in Articles IV and V of the current labor agreement -- except for variations caused by the Department's twenty-four hour work day. Employees then had no City-provided disability insurance. The Employer engaged a benefits consultant, Harding and Associates, which determined that sick leave benefits provided by the City were more generous than those provided by comparable employers. The City allowed employees to accumulate sick leave up to 120 days and to be paid for accumulated sick leave on termination of employment, whereas comparable employers limited accumulation to sixty days.

In 1998, the Employer began an effort to change the benefits package. It began by changing the benefits of the

City's thirty-four unrepresented employees, providing them with a personal leave program similar to what the Employer proposes here in its final offer. It reduces the maximum sick leave accumulation to sixty days from 120, and provides disability insurance that pays 70% of income after sixty days disability. The plan provided two personal leave days per month in lieu of sick leave and vacation, but used years-of-service caps on the number of days that could be used for vacation. It differed from the plan proposed here, however, in that it was made mandatory only for newly hired employees. Existing employees could elect to be covered by the new plan or not to be covered. Those who elected to be covered were provided with a five-year "buy down" of existing accumulations of sick leave.

The Union representing the eight employees of the Streets Department accepted the personal leave plan shortly after 1998, with a similar optional grandfathering of existing employees and a similar five-year buy-down of sick leave accumulations.

The labor agreement covering the two transit employees instituted the personal leave program for them in their first labor agreement, effective for 1999 through 2002, but this agreement adopted the program for existing and newly hired employees and it did not provide for disability insurance. Because the two transit department employees were among the Employer's unrepresented employees before the adoption of their 1999-2002 labor agreement, their sick leave and vacation benefits had been determined under the Employer's personal leave program, and the new agreement continued those benefits as set by the personal leave program.

The arbitration award that adopted the Employer's final offer for the Police Department in 2007 included a similar personal leave program. The parties do not agree whether this version of the personal leave program permits police employees hired before January 1, 2007, to opt out of mandatory use of the personal leave program for vacations. The text of the personal leave program that the Employer included in its final offer to the Police Union is reproduced in the interest arbitrator's award in that proceeding, dated January 24, 2007. The first sentence of that version of the personal leave program provides that "Police Officers, hired after 1/1/2007, will earn personal leave, at the rate of 16 hours per month, in lieu of sick leave, vacation, and floating holidays," but other parts of the text appear to make parts of the personal leave program applicable to those hired before January 1, 2007.

The Employer argues that adoption of its final offer will provide internal consistency among its employees for sick leave benefits, vacation benefits and disability insurance. The Employer urges that it is a well-recognized principle in interest arbitration that fringe benefits should be internally consistent -- to reduce internal friction among employees and to ease administration of benefit programs.

The Employer also argues that, because employees of the bargaining unit have a typical schedule for firefighting personnel, working fewer days per year but twenty-four-hour days, their vacation and sick leave benefits under the current labor agreement are far more generous to them and costly to the

City than similar benefits would be for eight-hour day employees or twelve-hour day employees (Police). Thus, a firefighter works an average of 10.1 twenty-four hour days per month, while an eight-hour per day employee works 21.7 days per month and a twelve-hour per day employee works 15.2 days per month. A firefighter can accumulate a maximum of 11.9 months of leave, while eight-hour and twelve-hour employees can accumulate 2.8 months and 5.3 months of leave. The Employer argues that the large accumulation possible for firefighters is expensive and disproportionate and justifies change to the personal leave program. The Employer estimates that maximum leave accumulation for firefighters would decline to 3.0 months -- close to the 2.8 month maximum leave accumulation permitted by the personal leave program for eight-hour employees and the 2.6 month maximum permitted for twelve-hour employees. The Employer contrasts the 120 day maximum accumulation of leave now permitted at Rice Lake with the 90 day maximum at Antigo, and the 75 day maximum at Ashland and Rhinelander. The Employer also contrasts the maximum vacation benefits at Rice Lake, twenty days per year after 23 years' service, with the maximums at Antigo, eighteen days per year after 25 years' service, Ashland, eleven days per year after 15 years' service, and Rhinelander, fifteen days per year after 20 years' service.

The Union makes the following arguments in support of its final offer. The Union argues that the Employer's wage proposal is inadequate, notwithstanding the Employer's appeal for internally consistent percentage increases. The Union argues

that its wage proposal would allow members of the bargaining unit to maintain income near to the rate of inflation, as determined by the Midwest and U.S. Urban Consumer Price Index -- 2.44% and 3.23% respectively, from 2005 to 2006. The Union showed the percentage by which wages were increased in Antigo, Ashland and Rhinelander in 2006 -- 2.75% at Antigo, 4.0% at Ashland and 0.0% at Rhinelander -- and in 2007 -- 2.5% at Antigo, 4.0% at Ashland and staggered increases of 2% on January 1, 2% on July 1 and 2% on December 1 at Rhinelander.

The Union argues that I should reject the Employer's final offer because the Employer's personal leave proposal is unfair and because it would impose, by arbitration, a loss of substantial previously bargained benefits without a corresponding gain to employees -- a "quid pro quo."

The Union rejects the Employer's argument that the version of the personal leave program offered here is the same as the version that covers all other employee classes. The Union urges that this version differs from those earlier versions, because the version now proposed for the firefighters would require all existing bargaining unit employees to accept substantial benefit reductions, while the personal leave program for other employee groups was made mandatory only for newly hired employees and allowed existing employees to grandfather their previous sick leave and vacation benefits. The Union urges that its members should not lose the admittedly substantial sick leave and vacation benefits they have obtained in previous bargaining without a bargained quid pro quo. The

Union urges that the part of the Employer's personal leave proposal that would buy down accumulated leave is not a real benefit to existing employees because it merely gives them something previously earned and previously negotiated.

For the following reasons, I award the Union's final offer. As noted above, this case must be decided using "total package final offer" arbitration. I am required to select the entire final offer of one party or the other, and I have no discretion to do otherwise. The policy that underlies the requirement to use this form of arbitration is salutary when it accomplishes its purpose -- to induce settlements, or at least to bring negotiating parties closer together, lest an arbitrator select against an extreme final offer. When that goal fails, however, as it appears to have failed in the present case, the strictures of this form of arbitration may force an award that would not be made in conventional arbitration.

If this were a different form of arbitration, I would not award the entire position of either party. I would favor the Employer's position on wages -- 1) because I accept the Employer's arguments that its finances are constrained, 2) because its proposal to increase wages by 1.5% per year is internally consistent and 3) because the wage information from comparison cities does not show a substantial need to depart from that internal pattern.

Though I would award the Employer's wage proposal if I were free to select parts of the parties' proposals separately, I would not award the Employer's proposal to impose the version

of the personal leave program included in its final offer. As the Union argues, that part of the Employer's final offer would take substantial previously bargained benefits from the Union without a corresponding quid pro quo. Further, the version of the personal leave program offered here is substantially different from the earlier versions that covered most of the Employer's other employees in that those employees were allowed the choice of retaining their previous sick leave and vacation benefits. Here, adoption of the Employer's final offer would impose drastic changes to the substantial sick leave and vacation benefits of the bargaining unit -- changes so great that, ordinarily, they should be made in the give and take of bargaining.

Though an award of the Employer's final offer would, as the Employer argues, eventually provide the Employer with a reduction in the expenses attributable to sick leave and vacation, an award of the Union's final offer will have little cash impact on the Employer's budget in 2006 and 2007. The Employer estimates that the buy-down of accumulated leave will cost about \$56,000 or \$11,200 per year for five years starting in 2007. The Employer presented evidence that the cost of bargaining unit wages, including increments for longevity and specialist certification, was \$408,724 in 2005. If the Employer's final offer were awarded, that cost would rise in 2006 to \$414,855 (by 1.5% or \$6,131) and in 2007 to \$421,078 (by an additional 1.5% or \$6,223 over the 2006 cost). With an award of the Union's final offer, these costs will rise in 2006 to \$418,942 (by 2.5% or \$10,218) and in 2007 to \$431,510 (by an additional 3% or

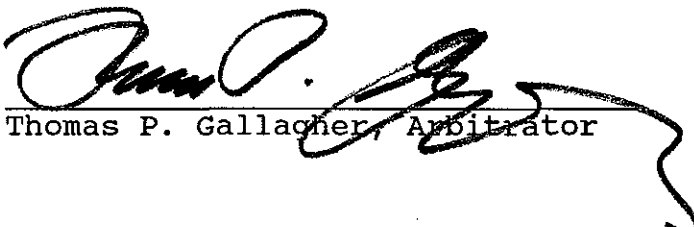
\$12,568 over the 2006 cost). These figures do not include any added longevity increments that may become payable during 2006 and 2007. If the Employer's final offer were awarded, the Employer would also incur the cost of disability insurance for bargaining unit members. The evidence does not include an estimate of that cost, but I assume it would not be substantial.

Thus, for 2006, the immediate impact of selection of the Union's final offer will increase the Employer's cost for wages by \$4,087 more than would selection of the Employer's final offer. For 2007, the selection of the Union's final offer will cost \$6,345 more for wages than selection of the Employer's final offer. This larger immediate cost of the Union's wage proposal will be offset by the immediate saving of the cost of disability insurance and the \$11,200 that the leave buy-down would cost in 2007. I understand that in the future the Employer would save from a requirement that all existing members of the bargaining unit be required to accept the personal leave program included in the Employer's final offer, but, as the Union argues, those costs were incurred in past bargaining.

AWARD

I award the Union's final offer.

June 27, 2007


Thomas P. Gallagher, Arbitrator