
In the Matter of the Petition of
LOCAL 74, INTERNATIONAL ASSOCIATION
OF FIREFIGHTERS, AFL-CIO

For Final and Binding Arbitration
Involving Firefighting Personnel
in the Employ of the

CITY OF SUPERIOR

Case XIX
No. 16314 MIA-29
Decision No. 11585-C

Appearances:

Mr. Leonard Rouse, President, for the Union.

Mr. Charles Ackerman, Negotiator, for the Employer.

ARBITRATION AWARD

On April 4, 1973, the Wisconsin Employment Relations Commission appointed Edward B. Krinsky as Chairman of an Arbitration Board to make a final and binding determination of a dispute between the City of Superior, Wisconsin, hereinafter referred to as the Employer, and Local 74, International Association of Firefighters, AFL-CIO, hereinafter referred to as the Association. The other members of the Arbitration Board are Charles C. Deneweth, Mayor of Superior, Wisconsin, selected by the Employer, and Edward Durkin, International Vice-President of the Firefighters Association, selected by the Association. The arbitration proceedings were conducted pursuant to Section 111.77, Wisconsin Statutes and were initiated by petition of the Association. Said statute requires that the Arbitration Panel choose the final offer of one of the parties in its entirety.

The Association's final offer was dated April 23, 1973, and received by the Panel Chairman on May 4th. The Employer's final offer was submitted by letter dated May 22, 1973, and received by the Chairman on May 24th.

A hearing was held at Superior, Wisconsin, on May 25th. No transcript of the proceedings was made. Each party was given full opportunity to present testimony and evidence and make arguments. At the hearing the Employer more fully articulated the terms of its final offer which had been outlined previously in letter form. Both parties were given additional opportunity at the hearing to amend their final offers but neither party elected to do so. The parties stipulated that following the hearing they would not change their offers. Neither party elected to file a post-hearing statement and thus the record was completed at the close of the hearing.

The final offers of the parties are reproduced in full below. The Association requests a wage increase and clauses dealing with: recognition, duration of agreement, union representative, discrimination, prevailing rights, rules and regulations, shift exchange, savings, appendices and amendments, overtime pay and grievance procedure. The Employer's offer provides a wage increase, recognition clause, discrimination clause, savings clause and grievance procedure.

Employer's Final Offer:

"The City of superior herewith submits, to the above honorable Board of Arbitration, its final offer to Firefighters' Local #74 in Case XIX No. 16314 MIA-29 to be heard, commencing with the hour of 9:00 A.M. on Tuesday, May 24, 1973. Said offer herewith tendered is intended to be effective and retroactive to January 1, 1973.

1. A wage increase of \$31.50 per month.
2. A recognition rule identifying Local #74 as the exclusive bargaining agent. (As stated in its hearing brief the Employer's offer is: 'The City hereby recognizes Firefighters Local #74 as the exclusive bargaining agent for all employees in the Department except the Chief and other supervisory personnel as defined by State Statute 111.70.')
3. A grievance procedure clause similar to those currently in effect with the City's other three bargaining units. (Particularly patterned from the Policemen's Grievance Clause) (As stated in its hearing brief the Employer's offer is: 'Definition: A grievance shall be defined as the misinterpretation or misapplication of the terms of this Agreement. All grievances filed by the Association shall be put in writing with a copy submitted to the Personnel Director. No settlement of a grievance made by personnel in the Fire Department shall set policy and no settlement shall be of a discriminatory nature. Step 1. The grievant shall, within five (5) days of the event giving rise to the grievance or knowledge of the event, submit the grievance to the Chief. The Chief shall give an answer within three (3) working days. Step 2. If the grievance is not satisfactorily resolved, it shall be submitted to the Wage and Classification Committee and the Personnel Director within three (3) working days after receipt of the answer in the first step. The Committee shall respond to the grievance within ten (10) days. Step 3. If the grievance is not satisfactorily resolved in the second step of the grievance procedure, the Union may submit the grievance to arbitration. If the issue is to be submitted to arbitration, the Union must submit the grievance to the American Arbitration Association. The decision of the Arbitrator shall be final and binding.')
4. A Savings Clause that mutually respects the Agreement should any portion thereof be held invalid. This would be in accordance with that currently being sought by the Firefighters. (As stated in its hearing brief the Employer's offer is: 'If any article or portion of this agreement should be held invalid by law, the remainder of this agreement shall not be affected thereby.')

5. A Discrimination Clause patterned from the Firefighters' request made on February 13th. (As stated in its hearing brief the Employer's offer is: 'The City and the Union hereby agree, not to discriminate against any employee because of his membership or non-membership in the Union, nor will they discriminate against any employee because of race, creed or color.')

The above offer will be more fully clarified by both a written and oral presentation at the above referred to hearing."

Association's Final Offer:

"As ordered by the Commission on February 2, 1973, Local #74 International Association of Firefighters is submitting our final position in regard to our negotiations with the City of Superior. Our requests are as follows:

A raise per man per month retroactive to January 1, 1973 for the sixty-seven (67) men who comprise the Fire Department Personnel (excluding the Chief and Assistant Chiefs). This raise to constitute 7% of the gross pay and allowances for the sixty-seven (67) men, added together and divided by 67, for an across the board raise of \$55.33 per man per month.

In addition to the salary increase, Local #74 is requesting the following contract language incorporated in our present contract.

1. RECOGNITION CLAUSE:

This agreement is entered into by and between the City of Superior, Wisconsin, hereinafter referred to as the Employer, and Local #74 of the International Association of Firefighters, hereinafter referred to as the Union.

It is the purpose of this Agreement to achieve and maintain harmonious relations between the Employer and the Union; to provide for equitable and peaceful adjustment of differences which may arise; and to establish proper standards of wages, hours, and other conditions of employment.

2. DURATION OF AGREEMENT:

A. This Agreement shall be effective as of January 1, 1973 and shall remain in full force and effect until its expiration date, December 31, 1973.

B. On or before June 30, 1973, either party hereto may notify the other party in writing of its desire to negotiate the terms and provisions of a successor Agreement. Promptly following such notification and specifically, within the next thirty (30) days, the party requesting negotiations shall submit their proposals and the parties hereto shall meet and engage in such negotiations.

C. If neither party hereto fails to give notice to the other party of its desire to negotiate a successor Agreement prior to the expiration date of this Agreement as above provided, this Agreement shall automatically be renewed for successive one (1) year terms thereafter.

3. UNION REPRESENTATION:

All bargaining unit members retain the right of Union representation on any matters of disciplinary action.

4. DISCRIMINATION:

The Employer agrees not to discriminate against any employee for his activity in behalf of, or membership in, the Union. The Employer and the Union agree that there shall be no discrimination against any employee because of race, creed, sex or religion.

5. PREVAILING RIGHTS:

A. All rights, privileges, and working conditions enjoyed by the employee at the present time, which have not been included in this Agreement, shall remain in full force, unchanged and unaffected in any way, during the term of this Agreement, unless they are changed in mutual consent.

B. Management rights - The City of Superior shall retain all rights given by the Statutes of the State of Wisconsin.

6. RULES AND REGULATIONS:

The Union agrees that its members shall comply with all Fire Department rules and regulations, including those relating to conduct and work performance. The Employer agrees that departmental rules and regulations which affect working conditions performance shall be subject to the grievance procedure.

7. SHIFT EXCHANGE:

Union members may exchange work days between themselves upon notification to the officer in charge. The City shall not be liable for overtime which accrues solely to the exchange of work hours.

8. SAVING CLAUSE:

If any provision of this Agreement, or the application of such provision, should be rendered or declared invalid by any court action or by reason of any existing or subsequently passed or enacted legislation, the remaining parts or portions of this Agreement shall remain in full force and effect.

9. APPENDICES AND AMENDMENTS:

All appendices and amendments to this Agreement shall be lettered, dated and signed by the responsible parties and shall be subject to all provisions of this Agreement. All such appendices and amendments during the life of the Contract must be mutually agreeable to both parties.

10. OVERTIME PAY:

One and one-half time for all hours worked over normal workweek as follows:

A normal work week shall average fifty-six (56) hours in a three (3) week cycle with shifts as follows:

Twenty-four (24) hours on duty and forty-eight (48) hours off, with the exception of those men working a forty (40) hour work week and the Night Dispatchers.

11. GRIEVANCE PROCEDURE:

- A. Both the Union and the City recognize that grievances and complaints should be settled promptly and at the earliest possible stage and that the grievance process must be initiated within fifteen (15) days of the incident.
- B. It is expected and understood that grievances and complaints between Firefighters shall be resolved by oral discussion between the parties involved. To the extent that such grievances or complaints are required to be reported to an Assistance Chief, or the Chief, the matter will be resolved as hereinafter set forth.
- C. Any difference of opinion, misunderstanding, complaint or grievance which may arise shall be processed as follows:

Step 1. The aggrieved employee shall present the grievance orally to his Assistant Chief accompanied by a Union Representative. The Assistant Chief shall discuss the grievance with the employee and the Union Representative and will give an answer within three (3) days.

Step 2. If the grievance is not settled at the first step, the grievance shall be presented, in writing, to the Chief within three (3) days of the Assistant Chief's answer pursuant to Step 1. The Chief shall, within five (5) days after such grievance is presented, hold an informal meeting with the aggrieved employee and the Union Representative. The Chief shall reduce his decision to writing and furnish a copy of the same within three (3) days of such meeting to all parties.

Step 3. If the grievance is not settled at the second step, the grievance shall be presented in writing to the Director of Personnel within five (5) days of the Chief's written decision as required in Step 2. Such grievance shall make specific reference to the contract article alleged to be violated. The Director of Personnel shall within five (5) days of receipt of such grievance set up an informal meeting to be attended by all parties and their representatives. Within five (5) days after such meeting the Director of Personnel shall reduce his decision to writing and forward copies to all parties.

Step 4. If the grievance is not settled in the third step, arbitration is the next and final step, but must be requested in writing within five (5) days of the receipt of the Director of Personnel's decision as in Step 3. The decision of the Arbitrator is to be final and binding upon both parties to the grievance.

- D. The term 'Arbitrator' as used herein shall refer to a single arbitrator.
- E. Final binding arbitration may be initiated by a notification in writing to the Wisconsin Employment Relations Commission. Said notice shall identify the Agreement provisions, the grievance or grievances and the department and employees involved. The W.E.R.C. shall submit the name of an arbitrator to be used.

- F. All expenses which may be involved in the arbitration proceedings relating to the calling of witnesses or the obtaining of depositions or any other similar expense associated with such proceedings shall be borne by the party at whose request such witnesses or depositions are required.
- G. The Arbitrator so selected shall hold hearing at a time and place convenient to the parties. Statements of position may be made by the parties, and witnesses may be called. The Arbitrator shall have initial authority to determine whether or not the dispute is arbitrable under the express terms of this Agreement. Once it is determined that the dispute is arbitrable, the arbitrator shall proceed in accordance with the provisions of this article to determine the merits of the dispute submitted to arbitration.
- H. All records pertinent to the grievance of the aggrieved employee covered by this Agreement shall be made available to the Union upon request for the purpose of handling grievances.
- I. Any period of time specified in this Article for the giving of notice or taking any action shall be interpreted to exclude Saturdays, Sundays and Holidays and may be extended by mutual agreement.
- J. In the event that the grievance arises out of the direct act of the Chief, the first step of the grievance procedure shall automatically be waived.
- K. The Union may appoint stewards and shall inform the City of the names of the individuals so appointed and of any change thereafter made in such appointments. The City shall allow a steward the necessary time to process grievances during the course of the duty day. The officer in charge shall make necessary transfers."

ISSUE #1: WAGES

Association's Position:

The Association seeks an across-the-board raise of \$55.33 per man per month for each person in the Fire Department excluding the Chief, and Assistant Chiefs. This figure is what the Association contends is an increase of 7% above gross pay for the 67 men in the unit, shared equally among them. The Association did not present an actual calculation of the figures, although it described the method used in calculating it. It is clear to the panel that the Association's monthly figure is approximately correct because it can be derived from figures presented by the Employer. The base salary figure for the unit is approximately \$537,000. If fringe benefit costs of a magnitude indicated in the Employer's exhibits are added to it and the total is increased by 7%, the increase per month approximates the monthly figure in the Association's offer.

The Association justified its demand on several bases.

(1) It contends that 5.5% was allowed under Pay Board guidelines and that because of the small increase given firefighters in 1972 an additional 1.5% equity adjustment would be permissible if the guidelines were still in effect and applicable to the bargaining unit. The Association uses the guidelines as a framework, as does the Employer even though the Association believes its members would be exempted in any case because of their low hourly wage rate.

(2) The Association contends that its hourly rate is below that paid to other employes of the Employer. Pipemen in the top range earn \$2.67 per hour and Captains earn \$2.86 per hour. These two classifications account for 45 of the 67 men in the unit and only 4 men in the unit receive more than \$2.86. The firefighters work a 56 hour work week. Policemen working for the Employer work a 40 hour week. The beginning rate for a new patrolman is \$4.01 per hour. In the Employer's Street Department, beginning laborers start at \$3.31 per hour and the top laborer rate is \$3.65 per hour.

(3) The Association compared its rates with those paid to other government employes in Superior. Beginning postal clerks and carriers earn a rate of \$4.00 per hour. The lowest rate paid at the Superior Water, Light and Power Company is \$4.00 per hour.

(4) The Association drew comparisons also with rates paid in private companies in Superior. At Fraser Ship Yard the starting rate is \$3.55 in July, 1973. At Cutler-LaLiberte-McDougall Lime Plant the starting rate is \$3.69. In 1972, Murphy Oil Company had a laborer rate of \$4.12. A helper at Superior Lidgerwood Mundy in August, 1973, will get \$4.16. The lowest railroad rate is for janitors who receive \$4.25 in 1973.

(5) The Association compared its wages to those paid to firefighters in the 13 other Wisconsin cities with populations of 25,000 to 48,000. The comparisons are with Beloit, Brookfield, Cudahy, Eau Claire, Greenfield, Janesville, Manitowoc, Sheboygan, South Milwaukee, Fond du Lac, Waukesha and Wausau. On a yearly basis the comparisons show Superior behind the average base salary of these cities by the following amounts: Captains, \$3,043; Drivers, \$1,644; Beginning Firefighters, \$947; Firefighters at the top of the pay scale, \$2,041.

(6) The Association introduced news clippings which reported the rapid increase in the cost of living. In the period February through April, 1973, the rate rose at a projected annual rate of 9.2% (the Arbitration Board notes Bureau of Labor Statistics figures indicate that during calendar 1972, the period of the parties' 1972 agreement, the cost of living rose 3.3%).

(7) The Association believes the Employer can find the funds to provide the requested increases. The Association believes it should not be deprived of an equitable increase because of the shortfall in anticipated Federal Revenue Sharing Funds. The Association notes that the Employer reduced the 1973 property tax rate by more than 4 mils.

Employer's Position:

The Employer justifies its wage offer as follows:

(1) The offer made to the Association is calculated on the same formula used to develop the offers made to and accepted by the other bargaining units in 1973. In actuality the offer made to the Association is slightly higher (4.72%) than the offer made to the Employer's three other bargaining units (3.71%; 4.55%; 4.62%). It is also higher than the 3.49% which the Employer indicates was granted to Superior's teachers after a lengthy strike. The Employer calculates the 4.72% as a 5.59% increase when the impact of fringe benefit costs is considered.

(2) The offer made by the Employer "is made so as to more closely adhere to our concept of the wage and price controls established by the Federal Government." The Employer asserts that this concept was accepted by the other bargaining units which stayed within a 5.5% framework.

(3) The Employer contends it has a deficit of \$192,886 at the beginning of 1973. The Employer explains that the deficit was brought about because the Employer allocated its entire anticipated Federal Revenue Sharing payments of more than \$680,000 to the Fire Department in lieu of using tax moneys for that purpose. However, only \$487,894 in Revenue Sharing was actually received. The Employer contends its financial picture is even more serious because the City Council allocated no money in the budget to cover the approximately \$83,500 granted to other bargaining units by the Employer because bargaining was not completed prior to the deadline for completing the 1973 budget. These factors plus the \$31,800 cost of the Employer's offer to the Association result in the Employer's having a deficit for 1973 of approximately \$300,000.

(4) The Employer does not agree with the Association that its wage rates should be based on what is paid in other communities. Because it anticipated the Association's use of comparisons the Employer made comparisons with other cities which compare Employer with 12 other Wisconsin cities, which shows that Superior has a disproportionately high ratio of numbers of firefighters to population. Of the 13 cities surveyed, Superior had the lowest population but is ranked first in terms of number of firefighters per resident. The Employer calculates it has 14 fire employees above the mean of the staffing in these cities.

(5) The Employer also cites local employment conditions as further justification for its offer. It cites the recent closing of several small businesses. In addition, the Employer noted, for the record, a statement drawn up by the clergy of Superior in March, 1973, which cited: an unemployment rate of 11.5% in January, 1973; unemployment 50% above the U. S. average since 1966; 40% of Superior's population earning less than \$6,000 per year and 20% of the people deriving their income from Social Security. The Employer contrasts this with a current mean average base salary for its firefighters above \$8,000 not counting fringe benefits.

ISSUE #2: RECOGNITION

The Association requests a recognition clause. The Employer stipulates that the Association is recognized, albeit that there has been no formal City Council recognition. The Association is interested in seeing such a clause in the contract because the recognition question was a subject of dispute in 1972 in a complaint case before the WERC in which the Association prevailed. The Employer does not challenge the recognition and in its offer has submitted a recognition clause in a form which differs slightly from the Association's formulation.

ISSUE #3: DURATION

The Association wants a duration clause as a means of assuring orderly negotiation procedures. It believes its language is simple and typical of such clauses in other firefighter contracts in the State. The Employer raised no objection to this clause other than to question an Association witness at the hearing about the time limits contained in the proposal and their relation to the time limits in Section 111.77, Wisconsin Statutes.

ISSUE #4: UNION REPRESENTATION

No issues were raised at the hearing regarding this request.

ISSUE #5: DISCRIMINATION

Neither side raised an issue with regard to the discrimination clause. The Employer prefers its version which states that the Association, too, will not discriminate against employes.

ISSUE #6: PREVAILING RIGHTS

The Association stresses the importance of a prevailing rights clause to the firefighters. It has declined the Employer's request made in bargaining to list each of the privileges, rights and working conditions it wants to maintain. The Association does not want to run the risk of leaving some rights, privileges or working conditions off the list. At the hearing the Association cites numerous examples of such conditions which the firefighters want to maintain: keeping their own beds from shift to shift; coffee breaks; cooking privileges; use of department refrigerators; TV and lounge privileges after working hours; use of the shop and tools after hours; maintenance of Association files on department premises; use of bulletin boards for Association notices. The Association cites a recent example where it contends such a benefit was taken away. Firefighters previously were allowed a one hour break to go home between the end of a shift and return to relief duty. The Association's witness asserted that there have also been veiled threats to remove other privileges although no specifics were given.

The Employer takes issue with the prevailing rights request. It is willing to list the specific rights, privileges and working conditions in the agreement but it does not want a blanket prohibition against any changes.

There was no discussion of the part of the Association's proposed clause dealing with Management Rights.

ISSUE #7: RULES AND REGULATIONS

The Association views its rules and regulations proposal as reasonable and not in conflict with Section 62.13, Wisconsin Statutes dealing with the Police and Fire Commission's powers. There was little discussion of this issue at the hearing.

ISSUE #8: SAVINGS CLAUSE

Both parties' offers contain a savings clause. There was no discussion of this request at the hearing.

ISSUE #9: SHIFT EXCHANGE

The Association views its shift exchange request as a codification of a longstanding past practice. While formally the procedure involves giving notification to a Captain and the Captain getting final approval by an Assistant Chief, in fact, according to the Association, no shift exchanges in memory have been turned down.

Questions raised at the hearing by the Employer representative during cross-examination would indicate that the Employer desires the Assistant Chief to continue to have the power to disapprove a shift exchange, even if such disapproval power is rarely exercised.

ISSUE #10: APPENDICES AND AMENDMENTS

The Association wishes this clause to guarantee that any amendments and appendices agreed upon by the parties will become a part of the contract. The Employer views this request as unnecessary because the contract will not be amended or changed without mutual agreement.

ISSUE #11: OVERTIME PAY

The Association cites a common practice in public and private employment as well as in the firefighting services in the State to be compensated at time and one-half for work in addition to the normal work week. The Employer did not discuss this request except to call to the attention of an Association witness that police in Superior get straight time pay for call-back and relief duty as well as court appearances. The rejoinder of the Association's witness was that the Employer usually objects to comparisons by firefighters with police during bargaining.

ISSUE #12: GRIEVANCE PROCEDURE

Each party has a grievance procedure in its offer. There was no discussion of these proposals at the hearing.

DISCUSSION:

The Arbitration Board has concluded that the issue of greatest importance to both parties is the wage issue. The Employer has offered 4.72%. This is a reasonable offer in the context of offers made to other employees employed by the City of Superior and the Superior School Board, and in fact is slightly more generous. It is an offer which is greater than the increase in cost of living during 1972. It is an offer which would not disturb the pattern of collective bargaining between the Employer and its several bargaining units since it would not give a greater increase to the last employe group to settle and thus possibly create incentives not to arrive at agreements until other units have concluded bargaining. These are factors which the Board would normally weigh strongly in favor of the Employer's offer absent a clear showing of wage inequity by the employe group seeking a larger settlement through arbitration.

It is clear to the Arbitration Board that there is a real inequity in this case. The inequity is great enough in the Board's view to overcome the factors mentioned above. The Association is persuasive in its presentation of wage comparisons showing the low wage position of the firefighters. The Board disagrees with the Employer's contentions that salary comparisons with other communities are not relevant. The comparisons with other firefighters in the State presented by the Association show that Superior's firefighters are far behind in salary. This is true even if the cities in the south and southeastern part of the State are eliminated from the comparisons. The average of the northernmost cities, Eau Claire, Manitowoc, Sheboygan, Fond du Lac and Wausau show Superior below the average by: Captains, \$2401; Drivers, \$1166 (only available figures for 3 cities); beginning Firefighters, \$646 (4 cities); Firefighters maximum, \$1589.

The Board notes these comparisons but it is not on comparisons with other cities alone that it relies for its conclusions that there is a significant salary inequity. Comparisons within the City of Superior clearly demonstrate the inequity. The inequity is most apparent when hourly rates are considered.

Firefighters work a longer work week than most other employes. The Employer has demonstrated that the majority of the normal 56 hour week is spent on standby time not fighting fires. However, it is the Employer which chooses to employ its firefighting services on that type of schedule. Regardless of what the firefighters are doing at any given moment, they must live at fire stations 56 hours per week, not 40 as is typical of the work schedule of other of the Employer's employes.

Should a firefighter's hours be worth less for each hour worked than some other employe's hours simply because not all of the hours are spent fighting fires or doing other arduous work? This is both a practical and theoretical question and it is not necessary for the Board to attempt to decide this difficult question. While arguments may be made that firefighter's hours should be lower because of the non-work time, it is the Board's view that it is not reasonable to judge a firefighter's work only when fighting fires. A firefighter working a 56 hour week is doing so because the Employer wishes to have round-the-clock fire protection.

The Arbitration Board has compiled the following table from the Association's exhibits showing pay to various groups of employes in Superior. Some of the comparisons are with laborers. The intent is not to equate firefighters and laborers. The purpose is to show that even in comparisons with the lowest paid jobs in other employment settings, the firefighter's hourly wages are low.

1972	Pipeman (firefighter) 3rd step	\$ 2.67/hour	\$ 7775/year
1973	Pipeman (Employer offer)	2.80	8153
1973	Pipeman (Association offer)	2.90	8439
1972	Fire Captain	2.86	8328
1973	Fire Captain (Employer offer)	2.99	8706
1973	Fire Captain (Association offer)	3.09	8992
1973	Police Patrolman 3rd step	4.20	8736
1973	Police Captain	5.11	10628
1973	Street Laborer 1st step	3.41	7092
1973	Street Laborer 3rd step	3.65	7588
1972	Superior Water, Light & Power Groundman	4.00	8320
1973	Fraser Ship Yard--starting rate	3.55	7380
1973	Cutler-LaLiberte-McDougall Lime Plant--Probationary Laborer	3.69	7675
1972	Murphy Oil--Laborer	4.12	8569
1973	Superior Lidgerwood Mundy--Helper	4.16	8652

The table shows comparisons with hourly wages paid to other employes of the Employer as well as by employers in the local labor market.

As shown in the table, based on the firefighters' present 56 hour work week, the Employer's \$378 annual increase offered for 1973 would increase the hourly rate approximately 13¢ per hour to \$2.80 for firefighters and \$2.99 for captains. The Association's \$55.33 per month offer would be approximately a 23¢ per hour increase and would raise the rates to \$2.90 and \$3.09 respectively.

The Board realizes that the longer hours worked by firefighters translate into more respectable rates when viewed in terms of annual earnings. The table shown above indicates annual earnings based on the assumption that the other employes in the comparison work year round at 40 hours per week.

The inequity is not as great on an annual basis as on an hourly basis, as the table indicates. However, it is the Board's view that the higher annual rate in the Association's offer is not excessive when the longer work week of the firefighters is considered. While not answering the question posed earlier about the proper weight to be assigned to hourly rates for firefighters the Board has concluded that by any standard the present hourly rate is too low and the Association's wage offer is more reasonable.

What about the question of the Employer's ability to pay? The Board is impressed by the fact that the Employer reduced the mil rate by more than 4 mils this year. While lowering the property tax rate is to be praised, not faulted, it does provide evidence, in the Board's view, that the Employer can find the means, if necessary, to generate additional revenue to meet the Association's requests.

Concerning the Employer's deficit, the Board does not wish to engage in hindsight about the Employer's wisdom or lack of same in not budgeting for 1973 salary increases for its employees covered by collective agreements which were not concluded by budget deadline. Nor will the Board judge the wisdom of making the entire 1973 Fire Department budget dependent upon Federal Revenue Sharing funds which only partially materialized. Regardless of the Employer's reasons for taking these actions, it is clear that there is now a possibility of a substantial deficit. It is the Board's view, however, that the problem will not be greatly exacerbated by granting the Association's wage offer as contrasted to the Employer's offer.

The Board has also considered the unemployment figures and description of local employment conditions furnished by the Employer. What is described by the Employer is a serious situation. However, in the Board's view the additional funds required by the Association's offer will not greatly add to the burden of the tax payers nor to the unemployment rates.

The discussion to this point has been solely concerned with the wage issue. This, as mentioned above, is only one of the issues involved and the panel must make its decision based on all of the issues, not just one. In essence, having found the Association's wage issue to be more reasonable than the Employer's because of existing inequities, the Board must determine whether the remaining issues are such that the Employer's position on them is more reasonable than the Association's and sufficiently so to warrant a decision by the panel that the Employer's issue in toto is more reasonable than the Association's.

Several of the requests of the Association are non-controversial. These include: Duration of Agreement; Union Representation; Appendices and Amendments. Regarding several other issues there is little difference between the wording of the two offers: Recognition Clause, Discrimination, Savings Clause. The Employer's discrimination offer is more balanced in that it includes a statement that the Association, too, will not discriminate, but this issue is minor in determining the overall reasonableness of the proposal. There are differences, too, in the language of the grievance procedure. There was no discussion of the grievance proposals and it is not clear to the Board that one proposal is more reasonable than the other.

The Association's offer includes overtime pay for hours in excess of a normal work week. The Board views this as a reasonable proposal. There was no contention by the Employer that such a proposal would be unduly burdensome financially.

In the Rules and Regulations Clause the Association agrees that its members will comply with all department rules and regulations, but will have the rules and regulations subject to the grievance procedure. Thus, there will be no resistance by the Association to carrying out the rules and regulations, a concern which the Employer's representative voiced at the hearing. The Board does not find it unreasonable to have rules and regulations subject to the grievance procedure.

In its Shift Exchange article the Association calls for notification to the officer in charge, rather than requiring the officer's approval. The record indicates that, in fact, shift exchanges occur routinely in the department. The Association's witness could not recall an instance in 18 years where an exchange request had been denied. The Board views this proposal as a convenience to the men and a reflection of well-established practice. It is certain that if commanding officers have good grounds for objecting to particular shift exchanges they will so order and the order will be obeyed, subject to the grievance procedure if the Association wishes to pursue it.

The last clause for the Board's consideration is the Prevailing Rights Clause. Section B, the Management Rights Clause, is not controversial. The Employer did not offer any Management Rights Clause. While the Association's proposed management clause is not the strongest that management could write, in the absence of an Employer offer, the clause is a reasonable one and recognizes that the labor agreement does not abridge any of management's statutory rights.

Section A of the proposal is the most difficult of the language proposals before the Board. It is not an unreasonable clause, although it does not contain what the Employer views as needed flexibility to make changes in operations. However, the Employer's offer is silent and does not address the real concerns articulated by the Association at the hearing regarding the firefighters' many rights and privileges and its fears that management might deprive them of such rights and/or privileges.

The proposed clause protects rights, privileges and working conditions enjoyed by the employee at the present time. Thus, it is not so broad as to require the continuation of any right, privilege or working condition that may ever have existed. Furthermore, as the Association's panel member expressed at the hearing, it will still be incumbent upon the Association to demonstrate, if challenged, that the item in dispute is indeed an existing right, privilege or working condition. Given the record at the hearing, there is no reason to expect that this clause will be used frivolously by the Association. If it is so used, the Employer will make the clause an issue in subsequent negotiations.

In conclusion, while some of the Association's language items might have been tempered to meet Employer needs had the Employer addressed the Association's concerns, the Board is not persuaded that the Association's language is unreasonable. When considered with the wage issue discussed earlier, the Board has concluded that the Association's complete final offer should be adopted.

The Board notes that the parties were not in agreement on the calculation of the Association's offer. The Board approves the Association's offer of an increase on an across-the-board basis to the bargaining unit exclusive of the Chief and Assistant Chiefs calculated as a 7% increase based on gross pay.

A draft of this Award was sent to the Board members using the 7% figure per person per month but giving them thirty days to attempt to agree on the computation of the dollar figure or in the alternative submit their calculations to the Chairman so that the Board could attempt to reconcile them. The Board members were unable to reconcile the figures and submitted them to the Chairman. After an exchange of correspondence, the Chairman notified the Board members by letter that the 7% of gross pay should be translated to be \$51.53 per man per month.

Although he disagreed with the Chairman's basis for making the calculation of "gross pay" because it did not include Employer payment of the employe share of pension and insurance, the Association's Board member concurred in the Award using the \$51.53 figure. The Employer's Board member did not formally indicate a concurrence or dissent, but it is assumed that he dissents and that is indicated below.

AWARD

The Arbitration Board awards in favor of the final offer submitted by the Association. The Association's offer is to be implemented in all respects, but it is agreed that the wage increase of 7% should be paid as an increase of \$51.53 per man per month to the employes in the bargaining unit.

BOARD OF ARBITRATION

Edward B. Krinsky /s/
Edward B. Krinsky
Chairman, Arbitration Board

7-27-73
Date

I concur:

Edward Durkin
Association's Arbitration Board Member

Date

I dissent:

Charles C. Deneweth
Employer's Arbitration Board Member

Date