

STATE OF WISCONSIN

ARBITRATION AWARD

APR 1 1974

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of
Fire Fighters Local 695, International
Association of Fire Fighters, AFL-CIO
and
City of Menasha, Wisconsin

Re: Case XXI No. 17639 MIA-88

Decision No. 12531-A

Appearances:

Mr. Edward Durkin, Vice President, International Association of Fire
Fighters, AFL-CIO, 5606 Old Middleton Road, Madison, Wisconsin 53705,
representing Fire Fighters Local 695, IAFF, AFL-CIO

Mr. John F. Maloney, Mulcahy & Wherry, S.C., Attorneys and Counsellors
at Law, 811 East Wisconsin Avenue, Milwaukee, Wisconsin 53202,
representing the City of Menasha

Fire Fighters Local 695, IAFF, herein called the Union, represents a unit of fire fighting personnel up through the rank of lieutenant employed by the City of Menasha, referred to herein as the City. The parties had an agreement for the calendar year 1973. During 1973 and early 1974 they engaged in unsuccessful negotiation for its renewal. On February 4, 1974 the Union filed a petition with the Wisconsin Employment Relations Commission requesting initiation of compulsory final and binding arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act. Following the filing of the petition the WERC conducted a mediation session on February 26. On March 8 the WERC certified the dispute to arbitration and ordered the parties to file their final offers as of February 4 and to select an arbitrator from a panel of names submitted to them by the Commission. By letter dated March 19 the Chairman of the Commission notified the undersigned of his selection as arbitrator. On March 25 the Chairman of the Commission transmitted the final offers of the parties as of February 4. These are reproduced as Attachments A and B.

The parties agreed to hold a hearing on May 13. They met with the arbitrator in Madison for a pre-hearing conference on May 2 and discussed and agreed upon several items of procedure. At the hearing held on May 13 in the City Hall in Menasha there were opportunities to present evidence in written form and to examine and cross-examine witnesses. A record

was made and a transcript was sent to the parties on June 16. It had been agreed that briefs would be filed within three weeks of the receipt of the transcript and that they would be exchanged by the arbitrator. It was also agreed at the hearing that either party could change its final offer within five days of the hearing. The Union's final offer as of the date of the hearing was its final offer. It is included as Attachment C. The City changed its final offer after the hearing, filing a new final offer dated May 18. It is included here as Attachment D. The briefs were exchanged by the arbitrator on July 11. Subsequently the City sent the arbitrator a letter dated July 18. This letter had as its purpose the clarification of some points made in the Union's brief and the correction of some of its own and the Union's salary figures. On July 19 the Union also sent a letter to the arbitrator with the purpose of clarifying a point made by the City in its brief. The letter enclosed a copy of a WERC Declaratory Ruling involving the City of Sun Prairie, Decision No. 11703-A. On July 20 the Union explained to the arbitrator in another letter that its July 19 communication had occurred after the Union's representative had conferred with the Chairman of WERC.

FINDINGS OF FACT

There is a fundamental difference between the parties on wage proposals. The existing wage structure calls for three classifications of fire fighters: 3rd, 2nd, and 1st classes. At the time of the hearing there were 12 incumbents in the 3rd class, 5 in the 2nd class, and 6 in the 1st class. New hires receive an automatic increase after six months and following a probationary first year they move into the 3rd class. From that point on movement into the 2nd and 1st classes occurs only when there are openings. Promotions are made by the Chief as openings occur. The Union asserts that this is the only such classification system in fire departments in Wisconsin, that all others provide for automatic progression over a period of years and with promotions only to the classification of driver or motor pump operator and to officer status. It appears then that in Menasha incumbents in the 1st class are actually comparable to drivers or motor pump operators in other departments and that after a probationary period Menasha rank and file fire fighters are divided into two classifications designated as 3rd and 2nd classes. Thus it is not unreasonable for the Union to argue that 3rd class fire fighters in the Menasha Fire Department are comparable to rank and file fire fighters who are at the top of their scales in other municipal fire departments in Wisconsin.

Because of differences in the wage proposals it is difficult to compare them. In terms of percentage of increase the City's 1974 offer provides for 3.0 per cent for new hires, 6.6 per cent for each of the three classes, and 7.0 per cent for lieutenants. For 1975 the City is offering increases of 6.6 per cent for new hires, 7.1 per cent for the three classes, and 7.25 per cent for lieutenants. Based upon the numbers of employees in the various classifications the total cost of the City's offer is estimated to be about \$20,000. Based on a 1973 payroll of about \$308,000,* this represents an increase of 6.6 per cent in 1974. (This figure does not represent an estimate of the City's total increase in payroll costs.

* This was a figure presented by the Union and was calculated by multiplying the number of men in each rank by their annual salaries. It is not total payroll cost. If such a figure were used, the percentage of increase estimates would be somewhat smaller.

There are other agreed upon items that raise the cost of whatever settlement is arrived at.) For 1975 the City's offer would increase payroll in the unit by an estimated \$28,000, an increase of approximately 8.7 per cent, based upon a 1974 payroll of approximately \$328,000. (The fact that the increase is higher than the percentage increases in any of the ranks is because the four new hires in 1974 would each receive \$1,700 annual increases as they moved from probationary rank to 3rd class in 1975.)

The Union's proposal provides for reclassification of most of the rank and file fire fighters. Since details as to length of service of each of the members of the unit were not provided to the arbitrator, calculating an estimate of the cost of the Union proposal requires some assumptions as to length of service. In order not to err on the low side, this report has assumed that all fire fighters in the unit, except for the four new hires in 1974, have four years of service. Thus the 12 incumbents in 3rd class would each be reclassified to the level of salary at four years of service, receiving increases of \$85 per month apiece. (In actuality, some of these incumbents have fewer than four years on the force and would therefore receive lower salary increases. For those who have four years of service, increases would be 11.3 per cent.) Assuming that all fire fighters in the second class (5 incumbents) have at least 4 years of service, salaries for them would increase from \$785 to \$835 or \$50 per month, an increase of 6.4 per cent. All six incumbents in the first class would move into the Motor Pump Operator classification, presumably at the top rate of \$870 (after the first six months of 1974), an increase of \$60 per month or 7.4 per cent. The salaries of the six lieutenants would advance from \$860 to \$920 per month, an increase of 7.0 per cent.

The Union's proposed increases for 1975 would equal 8.4 per cent for fire fighters with four years of service, 8.6 per cent for Motor Pump Operators, and 8.2 per cent for lieutenants.

In terms of total cost of payroll, the Union's proposal for 1974 is estimated to be about \$25,500, an increase over the 1973 estimated payroll of \$308,000 of 8.3 per cent. For 1975 the Union's proposal would increase payroll in the unit by an estimated \$29,000, an increase of approximately 8.7 per cent, based upon a 1974 payroll of approximately \$333,500. (Again, the percentage figure higher than any of the individual classification increases is accounted for by the reclassification of probationary employees.)

The Union estimates the cost of reclassification in its proposal to be 4.78 per cent, the cost of salary increases in 1974 to be 3.25 per cent. The Union's pay proposals are somewhat more modest at the fourth year of service level than the City's offer for the 2nd and 1st class fire fighters. Therefore the difference between my estimate of 6.6 per cent for the City's offer and my estimate of 8.3 per cent for the Union's proposal for 1974 is 1.7 per cent or an aggregate annual cost of about \$5,250. The reason for the relatively small size of the difference is that the cost of reclassifications in the Union's proposal is partially offset by a more generous City offer.

Both parties support their positions by citing rates in "comparable" cities. The Union has selected several cities of under 23,000 population for purposes of comparison. These are Cudahy, Whitefish Bay, Neenah, Watertown, Kaukauna, and West Bend. In addition, the Union has shown comparisons with certain cities in the Fox River Valley, including Appleton, Neenah, Oshkosh, Manitowoc, Fond du Lac, and Kaukauna. According to the Union's presentation, these comparisons for 1974 look about as follows:

<u>City</u>	<u>Monthly Rate (Top Step)</u>
Cudahy	\$1006.58
Whitfish Bay	992.00
Appleton	914.80
Neenah	890.00
Oshkosh	866.00
Manitowoc	860.50
Fond du Lac	855.79
Union's proposal for Menasha	835.00
City's offer - Fire Fighter 3rd Class	799.00
Watertown	762.08
Kaukauna	756.91
West Bend	715.00

Exclusive of City and Union proposals the average is \$861.96

The City has compared its offer with cities in the Fox River Valley and several other cities in other parts of the state with populations similar to that of Menasha. Although the City presented tables of comparisons for fire fighters and lieutenants at minimum and maximum rates, and with totals including the City's retirement contribution, as comparison with the data presented by the Union, the following table representing fire fighter maximum rates for 1974 is most pertinent to show here.

<u>City</u>	<u>Maximum Rate</u>	<u>Retirement</u>	<u>Total</u>
Appleton	\$914.80	\$73.18	\$987.98
Neenah	890.00	60.08	950.08
Menasha Offer - 1st Class	863.50	64.76*	928.26*
Fond du Lac	855.79	68.46	924.25
Oshkosh	866.00	54.99	920.99
Wisconsin Rapids	838.40	58.69	897.09
Kaukauna	756.91+	60.00	806.91+
De Pere	820.00	35.00	855.00
Marshfield	800.00	48.00	848.00
Two Rivers	795.94	47.76	843.70
Chippewa Falls	741.58	59.33	900.91

Exclusive of the Menasha offer, the averages for these were:

\$827.94

\$883.49

* This table was presented at the hearing. Subsequently the City increased its retirement contribution in an offer dated May 18. Therefore, the figures with asterisks should be increased by \$4.32.

+ Figures were corrected in the City's brief.

As on the subject of wages, there is a fundamental difference between the parties on the subject of a Management Rights clause. The Union would keep the present clause, quoted below:

Article III - Management Rights

A. The City retains all rights and or powers or authority that it had prior to this contract except as modified by this contract.

The City would substitute for those words the following:

The City possesses the sole right to operate the Menasha Fire Department and all management rights repose in it, subject only to the provisions of this Agreement and applicable law. These rights, which are normally exercised by the Fire Chief include, but are not limited to, the direction of all operations of the Menasha Fire Department; the establishment of reasonable work rules; the discipline of employees pursuant to Section 62.13, Wisconsin Statutes; the assignment and transfer of employees within the department; the determination of the classifications of employees needed to provide the services of the Menasha Fire Department. These rights shall be exercised in a reasonable manner and shall not be used to discriminate against any employees.

To support its proposal the City cites almost identical wording that now exists in its contract covering its policemen's bargaining unit. Also cited in support of its position are the clauses in current contracts between the International Association of Fire Fighters locals and the cities of Two Rivers, De Pere, Manitowoc, Marshfield, Neenah, Wisconsin Rapids, and Chippewa Falls. These clauses, marked Employer's Exhibit 28, are included here as Attachment E.

The third issue in dispute also represents a fundamental difference between the parties. This has to do with processing of discipline cases and the applicability of the grievance and arbitration procedures. The latter procedures and the specific wording have been agreed upon for the most part. In Step 4 of the grievance procedure, however, the City would limit the applicability of the grievance procedure to those matters relating to the interpretation of the agreement and not involving the authority of the Chief of the Fire Department as covered by Section 62.13 of the Wisconsin Statutes. Appeals from disciplinary action, suspensions, or recommendations of discharge would go to the Menasha Fire and Police Commission.

The Union would leave that qualifying wording out of Step 4 but would add the following sentence to the contract after the description of the arbitration procedure:

Rules and Regulations shall be part of this contract by reference and the reasonableness of such rules effecting wages, hours, or working conditions, shall be subject to the grievance procedure of this contract.

The effect of the Union's proposal would be to make the grievance and arbitration procedures applicable to discipline, suspension and discharge as well as "matters involving the interpretation, application or enforcement" of the terms of the agreement. Since the Rules and Regulations of the Chief would be incorporated by reference, a grievant subjected to discipline, suspension, or discharge under those rules could choose to take his case either through the grievance and arbitration machinery or to the Fire and Police Commission.

The City supported its position with testimony from the Menasha City Attorney. He testified that although there has not been a final ruling on the issue of the apparent conflict between Section 62.13 and Section 111.70, a bill introduced in the legislature to resolve the matter

in favor of arbitration was not acted upon. The City Attorney stated it as his opinion that Section 62.13 takes precedence. He also supported his view by reference to the fact that a citizen could bring charges against an employee of the Fire Department and carry it through a procedure parallel to arbitration and perhaps achieve a different outcome.

The City also cited clauses extant in agreements between the cities and unions with whom it had compared Menasha on the wage issue. In four cases the actual wording in agreements was presented. Without reproducing these clauses, it was clear that in Oshkosh, Marshfield and Fond du Lac disciplinary cases must go to the Police and Fire Commissions rather than through the grievance and arbitration procedures. A chart presented by the City also indicated that this procedure also obtained in Chippewa Falls and De Pere and that information was unavailable for Kaukauna. The Union, however, presented material indicating that in Chippewa Falls an employee of the fire department can appeal a disciplinary case to arbitration "if the decision of the Police and Fire Commission does not resolve the grievance." The Union also pointed out that in De Pere the procedure ends with the Mayor. While this does not support the Union's position on arbitration, neither does it support completely the City's assertion that De Pere discipline and discharge cases are appealed to the Police and Fire Commission. The Union also pointed out that in Kaukauna disciplinary matters are subject to grievance and arbitration procedures of the contract and to Section 62.13 of the Wisconsin Statutes. Thus, of the cities used for comparison, three provide for appeals to the Police and Fire Commissions only (Fond du Lac, Oshkosh, and Marshfield), four provide for arbitration (Appleton, Manitowoc, Neenah, and Wisconsin Rapids), two appear to provide for appeals to arbitration if Police and Fire Commission proceedings do not resolve the issues (Chippewa Falls and Kaukauna), one provides for a further appeal to the mayor following a report by the Police and Fire Commission (De Pere). Although the City's chart states that Two Rivers cases are not appealed to the Police and Fire Commission, neither party provided information about whether they could be carried through the grievance and arbitration procedure.

The Union supported its position by stating that several circuit courts had ruled in favor of arbitration, that an arbitrator in a case involving the City of Milwaukee Police Department ruled in favor of arbitration, and that the Wisconsin Employment Relations Commission had issued an advisory opinion in a case involving the Sun Prairie Police Department giving it as their opinion that in view of the more recent passage of Chapter 111.70, the legislative intent was to modify Section 62.13 with respect to the authority of an arbitrator to issue a final and binding award involving discipline, suspension or termination of police and fire fighters.

Opinion

Apart from the amount of the salary increases to be awarded, the issues involved in this case are ones which ordinarily are not entrusted to an arbitrator. This is because all of them -- (a) length of service versus promotion, (b) management rights versus shared decision making, and (c) resolution of disciplinary matters by a publicly appointed commission versus decision by a neutral arbitrator -- involve matters that the parties to collective bargaining ordinarily believe are governed by principle. In this kind of dispute the parties are likely to believe that it is inappropriate to submit such issues to an outsider who is charged with making a judgment based upon analysis of objective facts.

In the real world, of course, matters involving principle are nevertheless compromised in collective bargaining. It is commonplace, for instance, for an employer who has maintained his opposition to the union shop on grounds that he would never force his employees to join a union, to agree to a modified union security clause in exchange for another concession from the union, such as a more modest wage increase. In a traditional interest arbitration case an arbitrator also can adopt such a compromise. The limitations of final offer selection arbitration in this regard, however, are obvious.

I will treat the issues separately; first as to wages. Although the City has introduced evidence to show that it is already at the top of the list of comparable cities in per capita operating expenditures and expenditures per \$1000 of equalized valuation of property, in my opinion the difference between the City's and the Union's proposals on economic issues should not be determinative in arriving at an award. Based upon the calculations I have made above, the issue of ability to pay should not be dispositive in this proceeding. This observation applies to both 1974 and 1975.

It should be made clear that I have not ignored the City's testimony showing that its offer increases labor costs beyond basic salary increases. Its salary comparison tables introduced at the hearing included comparisons of retirement contributions, wherein the City compares very favorably with other cities in terms of the generosity of its contribution. The City also points out that its offer of up to \$10 in 1974 and \$15 or the premium, whichever is less, in 1975 for the dental plan also increases labor costs substantially. The point I am making here, however, is that the City's and the Union's proposals on these matters are the same. While adoption of these provisions will increase the City's labor costs substantially in 1974 and 1975, no action on my part in this award is going to change those costs.

On the subject of comparability the City makes a valid criticism of the Union's presentation of salary evidence from Cudahy and Whitefish Bay. Although these cities are similar in population, they are both in the Milwaukee labor market area and there appears to be no reasonable basis for comparison other than their similar populations. On the other hand it is difficult to understand why the City has chosen some of the cities it compares itself with. Both parties favor comparisons with other Fox River Valley cities. Most of those cities are larger than Menasha, however. On expenditures the City compares itself with Appleton, Wisconsin Rapids, Neenah, Manitowoc, Fond du Lac, Oshkosh, Marshfield, Kaukauna, Two Rivers, Chippewa Falls, De Pere, and Watertown. But on salaries the City has dropped out Manitowoc and Watertown with the explanation that they have different hours in their work weeks (Manitowoc with 51.8 and Watertown with 68). But it has included Marshfield, which also has a different work week (60 hours). It appears that the City has included Chippewa Falls, Marshfield, and Wisconsin Rapids, all of which are a substantial distance from Menasha, on the theory that they are cities with about the same population as Menasha. But if that is the case, it is not clear why they have not included Marinette and Stevens Point, both of which are also Third Class Cities and are closer than the others. Or for that matter, why is Wausau left out of the list of comparable cities?

In the City's list of comparable rates for 1974 (which I have termed "most pertinent" and have reproduced above on page 4) the maximum rate for Menasha is actually the rate for 1st class fire fighters and would apply to only six of the 24 fire fighter jobs. The proposed maximum salary rate for Menasha on this table ought to be the weighted average

for these jobs, i.e., six 1st class fire fighters @ \$863.50, six 2nd class fire fighters @ \$836.80, and twelve 3rd class fire fighters @ \$799.50. That weighted average is \$824.83 rather than \$863.50. If that figure is compared with the average of the ten cities used by the City for comparison, it is \$3.11 below the average.

As indicated above, it is difficult to compare the Union's salary proposal with that of the City. If accepted here, the Union's proposed salary of \$835 after four years would give each of the incumbents of the 3rd class an increase of \$35.50 more than they would get under the City's offer of \$799.50 for that classification. But incumbent 2nd class fire fighters with four years of service would get \$1.80 per month less than the City's offer if the Union's proposal were made effective.

Presumably the six 1st class fire fighters, who would get \$863.50 under the City's offer, would all move into the Motor Pump Operator classification under the Union's proposal at a starting rate of \$845. Although this would be a lower figure than they would receive under the City's offer, they would move up to \$870 six months after reclassification to Motor Pump Operator. This figure would compare with the following listing of maximum rates for Motor Pump Operator in the cities with which the City compares itself:

Appleton	\$897.00
Neenah	857.00
Oshkosh	827.17
Fond du Lac	818.79
Wisconsin Rapids	789.60
De Pere	802.00
Marshfield	776.67
Two Rivers	757.98*
Kaukauna	731.50
Chippewa Falls	717.53
Average (N=10)	\$797.52

*Maximum fire fighter pay; no MPO classification.

The Union proposal for this classification (\$870) is substantially higher than the average for these comparable cities, but it is only slightly higher than the City's offer of \$863.50 for fire fighters now performing duties of motor pump operators.

More significant than the relatively small difference in labor costs between the two proposals is the principle of whether increases in salary among the ranks of what are presently 3rd and 2nd class fire fighters should be based on promotion, as at present, or upon length of service, as appears to be the case in other fire departments in the State of Wisconsin. On this issue the Union has asserted that at present the Chief has sole authority to make determinations on promotions. Neither the City nor the Union introduced any testimony to indicate what objective standards were applied to such decisions other than that there has to be an opening which a man can be promoted into.

There is a great deal of published literature on the issue of merit versus length of service in making decisions on advancement in salary and promotion to more responsible duties. A good case can be made for the application of objective standards to determine which candidates are more meritorious. In this proceeding the parties have not made good cases to support their respective positions. In view of the prevailing practice

to the contrary and because I am unable to find any evidence in the record that promotions are based upon any objective evaluation of the competencies of the candidates, I tend to favor the principle of advancement by length of service.

In this section I shall examine the issue of management rights from the standpoint of the reasonableness of the City's offer and prevailing practice in comparable cities. As to its reasonableness, the first question relates to inclusion of a phrase saying that "all management rights repose in (City) subject only to the provisions of this Agreement and applicable law" when the Agreement does not provide for a choice of carrying a disciplinary case through the grievance procedure. It is difficult to answer the question of whether this is a reasonable clause except by reference to practice in other comparable cities. And here we find that the prevailing practice does not support the City's position.

Although the City introduced into the record management rights clauses from its own agreement with its policemen (almost identical to what is proposed in this proceeding) and fairly elaborate and restrictive clauses from agreements in fire fighter units in Two Rivers and Wisconsin Rapids, the clauses it shows for De Pere, Manitowoc, Marshfield, Neenah, and Chippewa Falls appear to provide greater support for the Union's position. Another pertinent piece of information as to prevailing practice which relates to the management rights issue is whether the agreements in question provide for review of discipline, suspension and discharge actions by the fire and police commissions or through the grievance and arbitration procedures. As indicated above on page 6, the situation is mixed, but it does not appear that a majority of the cities with whom the City compares itself provide only for appeals of such cases to their police and fire commissions.

It appears to the arbitrator that the City has not presented strong support in terms of prevailing practice in the cities with which it compares itself for adopting its Management Rights clause rather than keeping the one that has been in the agreement.

The remaining issue is the applicability of the grievance and arbitration clauses to disciplinary cases. Here again we have an issue that an arbitrator is reluctant to decide because both parties believe that matters of principle are involved. In this case the City has also stated the following position:

. . . that it does not possess the lawful authority to negotiate a Grievance and Arbitration Procedure which excludes the Fire and Police Commission or is in conflict with the provisions in Section 62.13 . . . Since the City could not lawfully accept the Association's proposal, it is beyond the scope of the authority of the arbitrator to render a decision which would force the City to accept the Association's proposal.

Regardless of that opinion, it appears to the arbitrator that the prevailing practice among the cities that this City has used for comparative purposes is to make disciplinary and discharge cases subject to the grievance and arbitration procedures in their agreements. And

-14-

since the City's Revised Rules and Regulations of the Menasha Fire Department (introduced into the record at the hearing) contain provisions relating to discipline, suspension and discharge, all of which are "conditions of employment" within the meaning of Section 111.70(1)(d) of the Wisconsin Statutes, it is not unreasonable to include them by reference in the agreement and to include the principle of making the reasonableness of such rules subject to the grievance procedure.

It should also be pointed out in this case that the Union has not foreclosed the avenue of carrying an appeal of a discipline, suspension, or discharge case to the Fire and Police Commission. Instead, the Union has stated that its proposal would allow cases to proceed on either avenue, to the Police and Fire Commission or through the grievance procedure to arbitration under the terms of the agreement.

As to the illegality of this arbitrator deciding in favor of the Union on this issue, I disclaim any definitive legal expertise or authority. If the City considers an award in favor of the Union on this issue to be illegal, then the proper authorities must be requested to review the award and make a determination. The legality of the award is not an issue for this arbitrator to decide. I would, however, cite the opinion of the Wisconsin Employment Relations Commission in its Declaratory Ruling involving the City of Sun Prairie, Decision No. 11703-A, which opines that an arbitrator does have authority to issue a final and binding award containing a provision for arbitration of discipline and suspension or termination of police and/or fire fighters or any other conditions affecting the stability of their employment.

The difficulties in making an award in this case have been cited above. All three issues involve questions that the arbitrator would prefer that the parties had decided in negotiations. It would be easier if one of the issues were of overbearing importance so that the others would necessarily follow from the decision to be made on that single issue. I do not find that any single issue has that kind of influential importance. All three issues are significant. All three will have a profound effect upon future relationships between the parties.

I have already implied which proposal I intend to choose. I would add one further explanation: In my opinion the award must be based in the final analysis on one's interpretation of the collective bargaining policy adopted by the legislature covering the relations between municipalities and unions of their employees. Section 111.70(2) of the Wisconsin Statutes makes the following declaration of policy (quoted in part):

RIGHTS OF MUNICIPAL EMPLOYEES. Municipal employees shall have the right of self-organization, and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, and such employees shall have the right to refrain from any and all such activities . . .

In Section 111.70(1)(d) the following definition of collective bargaining appears:

(d) "Collective bargaining" means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representatives of its employees, to meet and confer at reasonable times, in good faith, with respect to wages, hours and conditions of employment with the intention of reaching an agreement, or to resolve questions arising under such an agreement. The duty to bargain, however, does not compel either party to agree to a proposal or require the making of a concession. Collective bargaining includes the reduction of any agreement reached to a written and signed document. The employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the employees. In creating this subchapter the legislature recognizes that the public employer must exercise its powers and responsibilities to act for the government and good order of the municipality, its commercial benefit and the health, safety and welfare of the public to assure orderly operations and functions within its jurisdiction, subject to those rights secured to public employees by the constitutions of this state and of the United States and by this subchapter.

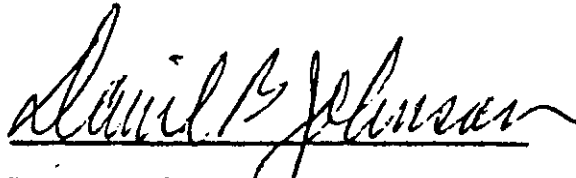
The holding in this case is based upon a theory that the award furthers the purpose of the legislation quoted. That law lays down a policy of promoting the process of collective bargaining. The City's position is based on different policy in another state law which spells out certain procedures and defines the rights and duties of public officials and subordinates in city fire departments. In this case it is my belief that the City's position must give way to the rights of employees to participate in the administration of their conditions of employment in the manner described in the law under which this arbitration proceeding has arisen.

AWARD

The Union's final offer, as of the day of the hearing in this proceeding and as described in Attachment C to this award, is adopted.

Dated: August 10, 1974

Signed:


David B. Johnson
Neutral Arbitrator

ATTACHMENT A



Menasha Professional Fire Fighters Association
Local 695 I.A.F.F. Menasha, Wisconsin 54952

March 24, 1974

Wisconsin Employment Relations Commission
 Room 910
 30 West Mifflin Street
 Madison, Wisconsin

W

MAR 21 1974

Re: City of Menasha
 Case XXI - M.I.A. 88 WISCONSIN EMPLOYMENT
 RELATIONS COMMISSION

Gentleman:

In compliance with your order of March 8th, 1974, Firefighters Local 695, submits our final offer as of February 4, 1974.

1. Wages (monthly)	1974	1975
Start	\$885.00 663.50	\$730.00
After 6 mos.	715.00	760.00
" 1st yr.	745.00	790.00
" 2nd yr.	775.00	835.00
" 3rd yr.	805.00	865.00
" 4th yr.	835.00	905.00

Motor Pump Operator

Start	\$845.00	\$920.00
After 6 months	870.00	945.00

Lieutenant

Start	\$895.00	\$970.00
After 1st year	920.00	995.00

2. Dental Insurance of \$10.00 per month.
3. Full employee share of pension paid by City.
4. One-half of accumulated sick leave credit to be used to pay health insurance premiums after retirement.
5. City pay employee share of State Group Life Insurance Program premiums.
6. Rules and Regulations part of contract and subject to grievance procedure.
7. Grievance procedure which includes discipline and arbitration by member of W.F.R.C.
8. Present contract language except to agreed changes.

Patrick O'Brien
 President, Local 695

Patrick O'Brien

ATTACHMENT B (PAGE 1)
MULCAHY & WHERRY, S.C.
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RECEIVED

MAR 22 1974

International Studies
and Programs
March 20, 1974

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PLEASE REPLY TO: Milwaukee

Mr. Morris Slavney, Chairman
Wisconsin Employment Relations
Commission
30 West Mifflin Street
Room 910
Madison, Wisconsin 53703

Re: City of Menasha
Case XXI No. 17639 MIA-88

Dear Chairman Slavney:

The purpose of this letter is to set forth the final offer of the City of Menasha as of February 4, 1974 on the issues remaining in the negotiations between the City of Menasha and Menasha Fire Fighters Local 695, IAFF, pursuant to Paragraph 3 in the order of the Commission No. 12531 dated March 8, 1974.

1. The City of Menasha proposes that the following be substituted for the present Grievance Procedure:

GRIEVANCE PROCEDURE

- A. Definition of Grievance: Only matters involving the interpretation application or enforcement of the terms of this agreement shall constitute a grievance under this agreement.
- B. Time Limitations: If it is impossible to comply with the time limits specified in the procedure because of work schedules, illness, vacations, etc., these limits may be extended by mutual consent in writing.
- C. Settlement of Grievance: Any grievance which is not carried to the next higher step within the time limits or any mutually agreed upon extension thereof will be considered settled when the time limits have run.
- D. Steps In Procedure:

Step 1: The grievant, either alone or with one (1) Union representative, shall orally explain his grievance to his shift captain within five (5) calendar days after he knew or should have known the cause of such grievance or the grievance shall be deemed to have been waived. In the event of a grievance, the employee shall perform his assigned work task and grieve his complaint later. The employee's shift captain shall, within five (5) calendar days, orally inform the employee, and the Union representative where applicable, of his decision.

ATTACHMENT B (PAGE 2)

Mr. Morris Slavney
March 20, 1974
Page 2

Step 2: If the grievance is not settled at the first step, the grievant and/or the Union Grievance Committee, within ten (10) calendar days after the oral decision of his shift captain, or the date on which the decision was due, shall prepare a written grievance to the Fire Chief. The Chief shall meet with the employee and/or the Union Grievance Committee. The Chief will inform the aggrieved employee and the Union in writing of his decision within ten (10) calendar days after the receipt of his grievance.

Step 3: If the grievance is not settled in the second step, the grievant and/or the Union Grievance Committee, within ten (10) calendar days after the written decision of the Fire Chief, shall forward his written grievance to the Mayor. The Mayor shall meet with the employee and/or the Union Grievance Committee. The Mayor will inform the grievant and the Union in writing of his decision within ten (10) calendar days after receipt of the grievance.

Step 4: If the grievance is not settled in the third step, it shall be submitted to the Personnel Committee. This appeal shall take place within five (5) calendar days after receipt of the written decision of the Mayor. The Personnel Committee shall then review the record and investigate the grievance. The Personnel Committee shall inform the aggrieved employee and the Union in writing of its decision within fifteen (15) calendar days after completion of the review.

2. The City of Menasha proposes that the following provision become the final and binding Grievance Arbitration Provision of the agreement:

ARBITRATION PROCEDURE

- A. Time Limits: If a satisfactory settlement is not reached in Step 4 of the Grievance Procedure, the employee and the Union must notify the City in writing within ten (10) calendar days after the decision of the Mayor or the Personnel Committee which ever is applicable, that they intend to process the grievance to arbitration or the appeal shall be deemed to have been waived.
- B. Arbitration Board: Before the initial arbitration hearing, the City and the Union shall each select one (1) member of the Arbitration Board. Either party may request the Wisconsin Employment Relations Commission to appoint a member of its staff as Chairman of the Arbitration panel.
- C. Arbitration Hearing: The Arbitration Board shall have the initial authority to determine whether or not the dispute is arbitrable

ATTACHMENT B (PAGE 3)

Mr. Morris Slavney
March 20, 1974
Page 3

under the expressed terms of this Agreement. Once it is determined that the dispute is arbitrable, the Arbitration Board, shall proceed in accordance with the provisions of this article to determine the merits of the dispute submitted to arbitration. The Arbitration Board selected or appointed shall meet with the parties as soon as a mutually agreeable date can be set to review the evidence and hear testimony relating to the grievance. Upon completion of this review and hearing the Arbitration Board shall render a written decision within thirty (30) days to both the City and the Union which shall be final and binding upon both parties.

D. Costs: Each party shall share equally in the costs and expenses of the arbitration hearing. Each party, however, shall bear its own costs for witnesses, panel member and all other out-of-pocket expenses, including possible attorney's fees. Testimony or other participation by employees during arbitration proceedings shall take place outside of working hours if possible. The arbitration hearing shall be conducted in the Menasha City Hall.

E. Decision of Arbitration Board: The decision of the Arbitration Board shall be limited to the subject matter of the grievance and shall be restricted solely to interpretation of the contract in the area where the alleged breach occurred. The Arbitration Board shall not modify, add to or delete from the express terms of the agreement nor shall it have the authority to submit observations or declarations of opinion which are not directly essential to reaching a decision.

3. The City of Menasha Proposes that the Following provision be added to the agreement to provide for the appeal of suspension, discipline and discharge matters to the Menasha Fire and Police Commission:

APPEAL TO POLICE AND FIRE COMMISSION

Any appeal by an employee of a disciplinary action, suspension or recommendation of discharge shall be pursuant to Section 62.13 Wisconsin Statutes, to the Menasha Fire and Police Commission.

4. The City proposes that the following provisions become the Management Rights provision of the new agreement:

MANAGEMENT RIGHTS

The City possesses the sole right to operate the Menasha Fire Department and all management rights repose in it, subject only to the provisions of this Agreement and applicable law. These rights, which are normally exercised by the Fire Chief include but are not limited to the direction of all operations of the Menasha Fire Department; the establishment of reasonable work rules; the discipline of employees pursuant to Section 62.13, Wisconsin Statutes; the assignment and transfer of employees within the department; the determination of the classifications of employees needed

ATTACHMENT B (PAGE 4)

Mr. Morris Slavney
March 20, 1974
Page 4

to provide the services of the Menasha Fire Department. These rights shall be exercised in a reasonable manner and shall not be used to discriminate against any employees.

5. The City of Menasha proposes that the following provision replace Paragraph 1 of Article XVII-School of the present agreement:

SCHOOL

When it has been certified that a fireman has received credits for fire science courses, his monthly compensation shall be increased five dollars (\$5.00) per month for each three (3) credits earned, starting 2/1 and 8/1. It is understood that the credits referred to herein are those credits given for courses taken on a regular semester basis at Fox Valley Technical Institute or taken at another educational institution, applying toward an Associate Degree in Fire Science Technology at Fox Valley Institute. Credits earned at Fox Valley Technical Institute, in addition to those required for the said degree shall also be paid for under this Section if they are related to fire fighting technology or skill as determined by the head of the Fire Science Technology program at Fox Valley Technical Institute, exclusive of additional courses such as English, Speech, or other liberal arts courses which are beyond the Associate Degree requirements.

No payment shall be paid for school credits while an employee is a probationary employee. In addition, in order to receive payment for school credits applying toward the Associate Degree but earned prior to employment by the Menasha Fire Department, at least twenty-five percent (25%) of such credits must be in fire fighting skills courses.

Paragraph 2 of Article XVII would remain as it is in the 1973 agreement.

6. It is our position that the City of Menasha and Fire Fighters Local 695 have agreed upon the following No Strike language for inclusion in the agreement:

Strike Prohibited: Neither the Union nor any of its officers, agents or employees will instigate, promote, encourage, sponsor, engage in or condone any strike, picketing, slow down, concerted work stoppage or any other intentional interruption of work during the term of this Agreement.

7. The City of Menasha proposes that a new Article regarding the settlement of prohibited practice problems be included in the agreement:

Settlement of Prohibited Practice Problems: In the event that either party desires to file a prohibited practice charge with the Wisconsin Employment Relations Commission against the other for any reason authorized under state law, that party shall so notify the other party in writing by certified mail summarizing the specific details surrounding the potential charge. Such charge may not be filed for a period of thirty (30) days following delivery to the other party and, upon re-

Mr. Morris Slavney
 March 20, 1974
 Page 5

ceipt of this notice, the parties agree to meet and confirm in an attempt to resolve the dispute during the thirty (30) day period.

8. The City of Menasha proposes to include the following provision in the agreement:

ENTIRE MEMORANDUM OF AGREEMENT

This Agreement constitutes the entire Agreement between the parties and no verbal statements shall supercede any of its provisions. Any amendment or agreement supplemental hereto shall not be binding upon either party unless executed in writing by the parties hereto. The parties further acknowledge that, during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the areas of collective bargaining and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the City and the Union for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargaining collectively with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject may not have been within the knowledge and contemplation of either or both of the parties at the time that they negotiated or signed this Agreement. Waiver of any breach of this Agreement by either party shall not constitute a waiver of any future breach of this Agreement.

9. The City of Menasha proposes that the new agreement be for a duration of two (2) years commencing January 1, 1974 and ending December 31, 1975.
10. The City of Menasha proposes that the following wages be paid during the term of the agreement:

WAGE SCHEDULE

	<u>1974</u>	<u>1975</u>
Fire Fighter		
Hire	\$685	\$730
After 6 months	\$715	\$760
After 1st year	\$745	\$780
After 2nd year	\$765	\$815
After 3rd year	\$795	\$845
After 4th year	\$825	\$885
Motor Pump Operator		
Start	\$835	\$895
After 6 months	\$845	\$905
Lieutenant		
Start	\$870	\$925
After 1st year	\$895	\$950

ATTACHMENT B (PAGE 6)

Mr. Morris Slavney
March 20, 1974
Page 6

11. The City of Menasha proposes to pay five dollars (\$5.00) per month per man to be paid toward dental insurance during 1974. No additional payment is offered during 1975.
12. The City of Menasha offers to increase its contribution on behalf of each fire fighter to the Wisconsin Retirement Fund by one half of one percent (1/2 of 1%) effective January 1, 1975. This would mean that the City of Menasha's contribution would total eight (8%) beginning January 1, 1975.
13. The City of Menasha makes no offer to grant the request of Fire Fighters Local 695 to use one half of each fire fighters accumulated sick leave credit for health insurance premiums after retirement. The fire fighters have reduced their original request for full payment of this benefit commencing January 1, 1975.

It is our belief on behalf of the City of Menasha that all of the issues that are presently unsettled are outlined in this letter. If that is not the case, we ask to be notified by the representative of Fire Fighters Local 695 so that we can reach agreement as to whether other issues remain outstanding and that we may have an opportunity to present the position of the City of Menasha on any such issues.

Copies of this letter are being sent to Mr. David B. Johnson, Mr. Edward Durkin and the Menasha Fire Fighters Local 695 for review.

Very truly yours,

MULCAHY & WHERRY, S.C.
Labor Negotiators for
the City of Menasha

Dennis J. McNally

DJM/ek

cc: Mr. Johnson
Mayor
City Clerk
City Attorney
Members of Personnel Committee
Mr. Durkin



Menasha Professional Fire Fighters Association Local 695 I.A.F.F. Menasha, Wisconsin 54952

Mr. David B. Johnson Arbitrator

The final offer of Local 695 is hereby amended as provided for under 111.77 of Wisconsin Statutes.

The Union position is as follows:

1. Dental Insurance: The City will pay up to ten dollars (10.00) per month on the premium for dental insurance for each employee during 1974. During 1975 the maximum payment shall be fifteen dollars (15.00) on the premium.
2. Pension: The City agrees to pay the employees contribution to the Wisconsin Pension Fund as provided in ~~Section 66.90~~ Chapter 41 of the Wisconsin Statutes.

3. WAGE SCHEDULE

Firefighter	<u>1974</u>	<u>1975</u>
Hire	\$685	\$730
After 6 months	\$715	\$760
After 1st year	\$745	\$790
After 2nd year	\$775	\$835
After 3rd year	\$805	\$865
After 4th year	\$835	\$905
 Motor Pump Operator		
Start	\$845	\$920
After 6 months	\$870	\$945
 Lieutenant		
Start	\$895	\$970
After 1st year	\$920	\$995

4. GRIEVANCE PROCEDURE

- A. Definition of Grievance: Only matters involving the interpretation application or enforcement of the terms of this agreement shall constitute a grievance under this agreement.

B.



**Menasha Professional Fire Fighters Association
Local 695 I.A.F.F. Menasha, Wisconsin 54952**

- B. Time Limitations: If it is impossible to comply with the time limits specified in the procedure because of work schedules, illness, vacations, ect., these limits may be extended by mutual concent in writing.
- C. Settlement of Grievance: Any grievance which is not carried to the next higher step within the time limits or any mutually agreed upon extention thereof will be considered settled when the time limits have run out.
- D. Steps In Procedure:

Step 1: The grievant, either alone or with one (1) Union representative, shall orally explain his grievance to his shift captain within five (5) calendar days after he knew or should have known the cause of such grievance or the grievance shall be deemed to have been waived. In the event of a grievance, the employee shall perform his assigned work task and grieve his complaint later. The employee's shift captain shall, within five (5) calendar days, orally inform the employee, and the Union representative where applicable, of his decision.

Step 2: If the grievance is not settled at the first step, the grievant and/or the Union Grievance Committee, within ten (10) calendar days after the oral decision of his shift captain, or the date on which the decision was due, shall prepare a written grievance to the Fire Chief. The Chief shall meet with the employee and/or the Union Grievance Committee. The Chief will inform the aggrieved employee and the Union in writing of his decision within ten (10) calendar days after the receipt of his grievance.

Step 3: If the grievance is not settled in the second step, the grievant and/or the Union Grievance Committee, within ten (10) calendar days after the written decision of the Fire Chief, shall forward his written grievance to the Mayor. The Mayor shall meet with the employee and/or the Union Grievance Committee. The Mayor will inform the grievant and the Union in writing of his decision within ten (10) calendar days after receipt of the grievance.



Menasha Professional Fire Fighters Association Local 695 I.A.F.F. Menasha, Wisconsin 54952

Step 4: If the grievance is not settled in the third step, it shall be submitted to the Personnel Committee. This appeal shall take place within five (5) calendar days after receipt of the written decision of the Mayor. The Personnel Committee shall then review the record and investigate the grievance. The Personnel Committee shall inform the aggrieved employee and the Union in writing of its decision within fifteen (15) calendar days after completion of the review.

The Union proposes that the following provision become the final and binding Grievance Arbitration Provision of the Agreement:

Arbitration Procedure

- A. Time limits: If a satisfactory settlement is not reached in Step 4 of the Grievance Procedure, the employee and the Union must notify the city in writing within ten (10) calendar days after the decision of the Mayor or the Personnel Committee which ever is applicable, that they intend to process the grievance to arbitration or the appeal shall be deemed to have been waived.
- B. Arbitration Board: Before the initial arbitration hearing, the City and the Union shall each select one (1) member of the Arbitration Board. Either party may request the Wisconsin Employment Relations Commission to appoint a member of its staff as Chairman of the Arbitration panel.
- C. Arbitration Hearing: The Arbitration Board shall have the initial authority to determine whether or not the dispute is arbitrable under the expressed terms of this Agreement. Once it is determined that the dispute is arbitrable, the Arbitration Board, shall proceed in accordance with the provisions of this article to determine the merits of the dispute submitted to arbitration. The Arbitration Board selected or appointed shall meet with the parties as soon as a mutually agreeable date can be set to review the evidence and hear testimony relating to the grievance. Upon completion of this review and hearing the Arbitration Board shall render a written decision within thirty (30) days to both the City and the Union which shall be final and binding upon both parties.



Menasha Professional Fire Fighters Association
Local 695 I.A.F.F. Menasha, Wisconsin 54951

- D. Costs: Each party shall share equally in the costs and expenses of the arbitrator and the arbitration hearing. Each party, however, shall bear its own costs for witnesses, panel member and all other out-of-pocket expenses, including possible attorney's fees. Testimony or other participation by employees during arbitration proceeding shall take place outside of working hours if possible. The arbitration hearing shall be conducted in the Menasha City Hall.
- E. Decision of Arbitration Board: The decision of the Arbitration Board shall be limited to the subject matter of the grievance and shall be restricted solely to interpretation of the contract in the area where the alleged breach occurred. The Arbitration Board shall not modify, add to, or delete from the express terms of the agreement nor shall it have the authority to submit observations or declarations of opinion which are not directly essential to reaching a decision.
5. Rules and Regulations shall be part of this contract by reference and the reasonableness of such rules effecting wages, hours, or working conditions, shall be subject to the grievance procedure of this contract.
6. All other contract language shall be the same as the 1973 Contract except where changed by mutual agreement during negotiations this past year.

ATTACHMENT D (PAGE 1)
MULCAHY & WHERRY, S.C.
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AREA CODE 715

PLEASE REPLY TO: Milwaukee

May 18, 1974

Mr. David B. Johnson
5807 Anchorage Avenue
Madison, Wisconsin 53705

Re: City of Menasha
Case XXI No. 17639 MIA-88

Dear Mr. Johnson:

The purpose of this letter is to set forth the final offer of the City of Menasha on the issues remaining in the negotiations between the City of Menasha and Menasha Firefighters Local 695, IAFF.

1. The City of Menasha proposes that the following wages be paid during the two-year term of the agreement:

WAGE SCHEDULE

<u>Firefighter</u>	<u>1974</u>	<u>1975</u>
Hire	\$685.00	\$730.00
After 6 months	\$715.00	\$760.00
3rd Class	\$799.50	\$856.65
2nd Class	\$836.80	\$896.60
1st Class	\$863.50	\$925.25
<u>Lieutenant</u>		
Start	\$893.50	\$958.30
After 1st year	\$920.20	\$986.90

2. The City will pay up to ten dollars (\$10.00) per month or the premium for dental insurance, whichever is less, for each employee during 1974. During 1975 the maximum payment shall be fifteen dollars (\$15.00) or the premium, whichever is less.
3. Beginning January 1, 1974, the City shall pay into the Wisconsin Retirement Fund established under Chapter 41, Wisconsin Statutes, eight percent (8%) of the gross compensation of each employee.

4. The City proposes that the following provisions become the Management Rights provision of the new agreement:

"The City possesses the sole right to operate the Menasha Fire Department and all management rights repose in it. subject only to the provisions of this Agreement and applicable law. These rights, which are normally exercised by the Fire Chief include, but are not limited to, the direction of all operations of the Menasha Fire Department; the establishment of reasonable work rules; the discipline of employees pursuant to Section 62.13, Wisconsin Statutes; the assignment and transfer of employees within the department; the determination of the classifications of employees needed to provide the services of the Menasha Fire Department. These rights shall be exercised in a reasonable manner and shall not be used to discriminate against any employees."

5. The City of Menasha proposes that the following provisions become the Grievance and Arbitration Procedures provision of the new agreement:

GRIEVANCE PROCEDURE

A. Definition of Grievance: Only matters involving the interpretation, application or enforcement of the terms of this agreement shall constitute a grievance under this agreement.

B. Time Limitations: If it is impossible to comply with the time limits specified in the procedure because of work schedules, illness, vacations, etc., these limits may be extended by mutual consent in writing.

C. Settlement of Grievance: Any grievance which is not carried to the next higher step within the time limits or any mutually agreed upon extension thereof will be considered settled when the time limits have run.

D. Steps in Procedure:

Step 1: The grievant, either alone or with one (1) union representative, shall orally explain his grievance to his shift captain within five (5) calendar days after he knew or should have known the cause of such grievance or the grievance shall be deemed to have been waived. In the event of a grievance, the employee shall perform his assigned work task and grieve his complaint later. The employee's shift captain shall, within five (5) calendar days, orally inform the employee, and the Union representative where applicable, of his decision.

Step 2: If the grievance is not settled at the first step, the grievant and/or the Union Grievance Committee, within ten (10) calendar days after the oral decision of his shift captain, or the date on which the decision was due, shall prepare a written grievance to the Fire Chief. The Chief shall meet with the employee and/or the Union Grievance Committee. The Chief will inform the aggrieved employee and the Union in writing of his decision within ten (10) calendar days after the receipt of his grievance.

Step 3: If the grievance is not settled in the second step, the grievant and/or the Union Grievance Committee, within ten (10) calendar days after the written decision of the Fire Chief, shall forward his written grievance to the Mayor. The Mayor shall meet with the employee and/or the Union Grievance Committee. The Mayor will inform the grievant and the Union in writing of his decision within ten (10) calendar days after receipt of the grievance.

Step 4: If the grievance is not settled in the third step, any grievance which is not covered by Section 62.13 of the Wisconsin Statutes and does not involve the authority of the Chief of the Fire Department but rather relates only to the interpretation of the contract, shall be submitted to the Personnel Committee. This appeal shall take place within five (5) calendar days after receipt of the written decision of the Mayor. The Personnel Committee shall then review the record and investigate the grievance. The Personnel Committee shall inform the aggrieved employee and the Union in writing of its decision within fifteen (15) calendar days after completion of the review. Any appeal by an employee of a disciplinary action, suspension or recommendation of discharge shall, pursuant to Section 62.13 Wisconsin Statutes, be to the Menasha Fire and Police Commission.

ARBITRATION PROCEDURE

- A. Time Limits: If a satisfactory settlement is not reached in Step 4 of the Grievance Procedure, the employee and the Union must notify the City in writing within ten (10) calendar days after the decision of the Mayor or the Personnel Committee which ever is applicable, that they intend to process the grievance to arbitration or the appeal shall be deemed to have been waived.
- B. Arbitration Board: Before the initial arbitration hearing, the City and the Union shall each select one (1) member of the Arbitration Board. Either party may request the Wisconsin Employment Relations Commission to appoint a member of its staff as Chairman of the Arbitration Panel.
- C. Arbitration Hearing: The Arbitration Board shall have the initial authority to determine whether or not the dispute is arbitrable under the expressed terms of this Agreement. Once it is determined

Mr. David B. Johnson

-4-

May 18, 1974

that the dispute is arbitrable, the Arbitration Board, shall proceed in accordance with the provisions of this article to determine the merits of the dispute submitted to arbitration. The Arbitration Board selected or appointed shall meet with the parties as soon as a mutually agreeable date can be set to review the evidence and hear testimony relating to the grievance. Upon completion of this review and hearing the Arbitration Board shall render a written decision within thirty (30) days to both the City and the Union which shall be final and binding upon both parties.

- D. Costs: Each party shall share equally in the costs and expenses of the arbitration hearing. Each party, however, shall bear its own costs for witnesses, panel member and all other out-of-pocket expenses, including possible attorney's fees. Testimony or other participation by employees during arbitration proceedings shall take place outside of working hours if possible. The arbitration hearing shall be conducted in the Menasha City Hall.
- E. Decision of Arbitration Board: The decision of the Arbitration Board shall be limited to the subject matter of the grievance and shall be restricted solely to interpretation of the contract in the area where the alleged breach occurred. The Arbitration Board shall not modify, add to or delete from the express terms of the agreement nor shall it have the authority to submit observations or declarations of opinion which are not directly essential to reaching a decision.

All other provisions of the contract would be as agreed upon previously by the union and the City or as in the previous contract between the parties if not previously discussed in bargaining for the 1974-75 agreement.

Very truly yours,

MULCAHY & WHERRY, S.C.
Labor Negotiators for
the City of Menasha


Dennis J. McNally

DJM/ek

cc: Mayor Wiecki
City Clerk
Fire Chief
City Attorney
Personnel Committee
Mr. O'Brien
Mr. Ed Durkin

ATTACHMENT E (PAGE 1)

CURRENT LOCAL MUNICIPAL
MANAGEMENT RIGHTS PROVISIONS1974 and 1975 CONTRACT BETWEEN
CITY OF MENASHA and
MENASHA POLICE DEPARTMENT, LOCAL 34ARTICLE III - Management Rights

The City possesses the sole right to operate the Menasha Police Department and all management rights repose in it, subject only to the provisions of this agreement and applicable law. These rights, which are normally exercised by the Chief of Police, include but are not limited to the direction of all operations of the Menasha Police Department, the establishment of reasonable work rules, the discipline of employees pursuant to Section 62.13, Wisconsin Statutes, the assignment and transfer of employees within the department, and the determination of the number and classifications of employees needed to provide the services of the department. These rights shall be exercised in a reasonable manner and shall not be used to discriminate against any employees.

ATTACHMENT E (PAGE 2)

1973-1974 CONTRACT BETWEEN LOCAL 423,
IAFF, AFL-CIO AND CITY OF TWO RIVERSARTICLE 4MANAGEMENT RIGHTS

The City possesses the sole right to operate City government and all management rights repose in it, but such rights must be exercised consistently with the other provisions of this contract. These rights include but are not limited to the following:

- A. To direct all operations of City Government.
- B. To establish reasonable work rules, with the reasonableness of the rules to be subject to the grievance procedure.
- C. To hire, promote, transfer, assign and retain employees in positions with the Fire Department.
- D. To suspend, demote, discharge and take other disciplinary action against employees pursuant to authority and under the rules and regulations of the Two Rivers Fire and Police Commission.
- E. To relieve employees from their duties because of lack of work or other legitimate reasons.
- F. To establish reasonable schedules of work.
- G. To maintain efficiency of City Government operation entrusted to it.
- H. To take whatever action is necessary to comply with State or Federal law.
- I. To introduce new or improved methods or facilities.
- J. To determine the number, structure and location of departments and divisions; the kinds and amounts of services to be performed as pertains to Fire Department operations; and the number and kind of positions and job classifications to perform such services.
- K. To change existing methods or facilities.
- L. To contract out for goods or services.
- M. To determine the methods, means and personnel by which Fire Department operations are to be conducted.
- N. To take whatever action is necessary to carry out the functions of the City in situations of emergency.

1973 CONTRACT BETWEEN I.A.F.F.
LOCAL 1998 AND CITY OF DE PERE

Article 3 -- Management Rights

The rights, power and authority of the City are not to be exercised in a manner that will undermine the Union or as an attempt to evade the provisions of this agreement, or to violate the spirit, intent or purposes of this agreement. The right of the Union or employees there of shall not be exercised in a manner that would infringe on the management rights, power and authority of the City.

ATTACHMENT E (PAGE 3)

1974 CONTRACT BETWEEN I.A.F.F.
LOCAL 1998 and CITY OF DE PERE

Article 3 -- Management Rights

The rights, power and authority of the City are not to be exercised in a manner that will undermine the Union or as an attempt to evade the provisions of this Agreement, or to violate the spirit, intent or purpose of this Agreement. The right of the Union or employees thereof shall not be exercised in a manner that would infringe on the management rights, power and authority of the City.

1973 CONTRACT BETWEEN I.A.F.F.
LOCAL 368 AND CITY OF MANITOWOC

Article III - Management Rights

(A) The City retains all rights, power or authority that it had prior to this contract as modified by this contract.

(B) The powers, rights and/or authority herein claimed by the City are not to be exercised in a manner that will undermine the Union or as an attempt to evade the provisions of this Agreement or to violate the spirit, intent or purposes of this Agreement.

1974 CONTRACT BETWEEN I.A.F.F.
LOCAL 368 AND CITY OF MANITOWOC

Article III - Management Rights

(A) The City retains all rights, power or authority that it had prior to this Contract as modified by this Contract.

(B) The powers, rights and/or authority herein claimed by the City are not to be exercised in a manner that will undermine the Union or as an attempt to evade the provisions of this Agreement or to violate the spirit, intent or purposes of this Agreement.

ATTACHMENT B (PAGE 4)

1973 CONTRACT BETWEEN I.A.F.F., LOCAL
UNION NO. 1021, AFL-CIO, AND
CITY OF MARSHFIELD

ARTICLE XIII.

RESERVATION OF RIGHTS

The City retains all of the rights, powers and the authority exercised or had by it prior to the time the Union became the collective bargaining representative of the employees here represented, except as specifically limited by express provision of this agreement.

1974 CONTRACT BETWEEN I.A.F.F., LOCAL
UNION NO. 1021, AFL-CIO, AND
CITY OF MARSHFIELD

ARTICLE XIII.

RESERVATION OF RIGHTS

The City retains all of the rights, powers and the authority exercised or had by it prior to the time the Union became the collective bargaining representative of the employees here represented, except as specifically limited by express provision of this agreement.

1974 CONTRACT BETWEEN I.A.F.F. LOCAL 275,
AFL-CIO, AND CITY OF NEENAH

Article 3 - Management Rights

- (A) The City retains all rights, powers or authority that it has prior to this modified contract.
- (B) The powers, rights and/or authority herein claimed by the City are not to be exercised in a manner that will undermine the Union or as an attempt to evade the provisions of this agreement or to violate the spirit, intent or purposes of this agreement.

ATTACHMENT E (PAGE 5)
1973 CONTRACT BETWEEN I.A.F.F.
LOCAL 1054 AND
CITY OF WISCONSIN RAPIDS

ARTICLE III
RESERVATION OF RIGHTS

The Union recognizes the right of the City and Chief of the Fire Department, to operate and manage its affairs in all respects. The Union recognizes the exclusive right of the Chief of the Fire Department to establish reasonable departmental rules and procedures.

The City and the Chief of the Fire Department, have the exclusive right and authority to schedule overtime work as required in the manner most advantageous to the City, commensurate with the applicable ordinances or resolutions providing for overtime compensation, as outlined in this Agreement, to Firefighters (covered by this Agreement).

It is understood by the parties that every duty connected with the Fire Department operations enumerated in job descriptions is not always specifically described and it is intended that all such duties shall be performed by the employees.

The Chief of the Fire Department, and the Police and Fire Commission reserve the right to discipline or discharge for cause. The City reserves the right to lay off personnel of the department. The City and the Chief of the Fire Department shall determine work schedules consistent with this Agreement and establish methods and processes by which such work is performed. The City and the Chief of the Fire Department shall have the right to transfer employees within the Fire Department in a manner most advantageous to the City.

The City, the Chief of the Fire Department, and the Police and Fire Commission shall retain all rights and authority to which by law they are entitled.

The City shall have exclusive authority to transfer any governmental operation now conducted by it to another unit of government, and such transfer shall not require any prior negotiations or the consent of any association, group organization, or labor organization whatsoever and further more, upon transfer, all Agreements are terminated, including this Agreement as pertaining to personnel of the department affected by the transfer.

The City shall have the authority to consolidate the operations of two or more departments within the Fire Department and to reorganize the operations with the Fire Department.

The Union recognizes that the City has Statutory and charter rights and obligations in contracting for matters relating to municipal operations. The right of contracting or subcontracting is vested in the City.

The Union pledges cooperation to the increasing of departmental efficiency and effectiveness. Any and all rights concerning the management and direction of the Fire Department and the Fire Fighters shall be exclusively the right of the City and the Chief of the Fire Department, unless otherwise provided by the terms of this Agreement as permitted by law.

The powers, rights, and/or authority claimed by the City are not to be exercised in a manner that will undermine the Union or as an attempt to evade the provisions of this Agreement, or to violate the spirit, intent, or purpose of this Agreement.

1974 CONTRACT BETWEEN I.A.F.F.
LOCAL 1054 AND
CITY OF WISCONSIN RAPIDS

ARTICLE III

RESERVATION OF RIGHTS

The Union recognizes the right of the City and Chief of the Fire Department, to operate and manage its affairs in all respects. The Union recognizes the exclusive right of the Chief of the Fire Department to establish reasonable departmental rules and procedures.

The City and the Chief of the Fire Department, have the exclusive right and authority to schedule overtime work as required in the manner most advantageous to the City, commensurate with the applicable ordinances or resolutions providing for overtime compensation, as outlined in this Agreement, to Firefighters (covered by this AGREEMENT.)

It is understood by the parties that every duty connected with the Fire Department operations enumerated in job descriptions is not always specifically described and it is intended that all such duties shall be performed by the employees.

The Chief of the Fire Department, and the Police and Fire Commission reserve the right to discipline or discharge for cause. The City reserves the right to lay off personnel of the department. The City and the Chief of the Fire Department shall determine work schedules consistent with this Agreement and establish methods and processes by which such work is performed. The City and the Chief of the Fire Department shall have the right to transfer employees within the Fire Department in a manner most advantageous to the City.

The City, the Chief of the Fire Department, and the Police and Fire Commission shall retain all rights and authority to which by law they are entitled.

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The City shall have the authority to consolidate the operations of two or more departments within the Fire Department and to reorganize the operations with the Fire Department.

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ATTACHMENT E (PAGE 7)

The Union pledges cooperation to the increasing of departmental efficiency and effectiveness. Any and all rights concerning management and direction of the Fire Department and the Fire-Fighters shall be exclusively the right of the City and the Chief of the Fire Department, unless otherwise provided by the terms of this agreement as permitted by law.

The powers, rights, and/or authority claimed by the City are not to be exercised in a manner that will undermine the Union or as an attempt to evade the provisions of this Agreement, or to violate the spirit, intent, or purpose of this Agreement.

1974 CONTRACT BETWEEN CITY OF
CHIPPEWA FALLS AND IAFF LOCAL 1816

ARTICLE III - MANAGEMENT RIGHTS

The Employer reserves and retains solely and exclusively all of its common law, statutory and inherent rights to manage its own affairs. The Employer reserves the right to establish reasonable work rules. The reasonableness of these work rules is subject to the grievance procedure.