

In the Matter of

Arbitration Proceedings

CITY OF WAUSAU

DISCUSSION & AWARD

and

Case XI

No. 19963

WAUSAU FIRE FIGHTERS ASSOCIATION

MIA - 197

LOCAL 415, IAFF, AFL-CIO

Decision No. 14291-A

On January 29, 1976 the Wisconsin Employment Relations Commission issued Findings of Fact, Conclusions of Law, Certification of Results of Investigation and Order Requiring Arbitration pursuant to petition filed by the Association. From a panel of arbitrators furnished the parties pursuant to said Decision No. 14291-A, the undersigned was chosen and an order issued on February 12, 1976 directed to hear the matter and issue a final and binding award. Pursuant to said order, a hearing was held in Wausau on March 9, 1976 after which counsel for both parties filed post-hearing briefs which were exchanged on April 4, 1976.

Appearing for the Association: Ed Durkin, Vice-President, Fifth District IAFF.

Appearing for the City: Mulcahy & Wherry, by James L. Everson, counsel.

The City of Wausau and the Wausau Fire Fighters Association, Local 415 have a two year labor agreement covering 1975 and 1976. Pursuant to the terms of that agreement, the contract was reopened for the purpose of establishing 1976 wage rates. (Exhibit 1) Pursuant to this wage reopener provision, the Association presented its 1976 wage proposals which were the subject of bargaining during late 1975. On December 29, 1975 the Association petitioned the Wisconsin Employment Relations Commission for arbitration of the 1976 wage dispute. After an unsuccessful attempt to mediate the dispute, the Commission certified an impasse and ordered that the dispute be arbitrated under the provisions of Section 111.77 Wis. Stats. The applicable Statute provides that "The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification."

The final offer of the City reads as follows:

"Effective January 1, 1976, the monthly wage rates shown in Appendix "A" of the 1975-76 contract be as follows:

	A	B
Captain, Inspector, Mechanic	\$1,051.00 (59.25)	\$1,012.00 (\$57.00)
Lieutenant, Assistant Inspector	\$1,029.10 (\$58.10)	\$ 991.00 (\$56.00)
Motor Pump Operator	\$ 985.50 (\$56.08)	\$ 948.00 (\$53.00)
Firefighter	\$ 963.70 (\$55.05)	\$ 928.00 (\$53.00)

"Figures in parenthesis represent dollar increases from 1975 Appendix "A" rates."

The Association's final offer provides: "\$72.00 per month increase from 1975 Appendix "A" rates for all classifications within the bargaining unit, effective January 1, 1976."

The City's offer provides for a 6% wage increase, the same amount which was offered to other City employees. The Association's wage proposal on the other hand provides for an approximate 8% increase.

The Association argues that the past bargaining history of the parties fails to support the City's contention that all City employees be treated alike. The Association further argues that a proper projection of increases given by private employers in the area demonstrated that the fourteen companies included in the survey would show a 7% to 8% increase in wages. (TR 141 and 143) The Association maintains that this is also in line with its own Exhibit 10 which shows the State of Wisconsin negotiated

wage increases to be 7.8%, which squares with the Association final offer of increases ranging from 7.54% to 8.23%. The Association concludes: "Based on both the City's own witness and the results of a recent survey by the State of Wisconsin, the Fire Fighter's Final Offer is more reasonable than the City's when compared to private employers in the area." The Association further argues:

"... Exhibit 7 clearly and accurately points out - Wausau Fire Fighters have dropped \$39 per month in Real Spendable Earnings since 1972. The reverse should be true if they were bettering themselves. The Union's Final Offer will only make up part of that deficiency. The City's Final Offer would drop the Fire Fighters even lower than the \$39. ... The Union submitted data showing the comparisons of Wausau Fire Fighters to Fire Fighters in other Wisconsin cities of similar size. The Union acknowledges the various economic differences between some of the cities listed. However, it is a list of EVERY city in Wisconsin with a population between 30,000 and 50,000. Size and being in the same state do lend credence to the list even though it is obvious the cities are not identical.

"The Union did not stress in the Hearing that Wausau is \$76 a month behind their brother Fire Fighters in other Wisconsin cities of similar size. What the Union did stress was that even under the Union's proposal, the Fire Fighters will drop to \$99 behind in 1976. The City's Final Offer would drop Fire Fighters \$118 per month behind. The offer of the City cannot be judged reasonable when it deteriorates Wausau Fire Fighter's position that much in one year."

The Association also points out (Union Exhibit 4) that the "Wausau Fire Fighters receive only one-half the longevity payments received by Fire Fighters in the three comparable communities" [Marshfield, Stevens Point and Wisconsin Rapids] Another argument advanced by the Association is that there is a substantial disparity between the Police and Fire Fighters of Wausau. The Association contends that if all costs are taken into consideration (Union Exhibit 9), there is a \$96 difference in favor of the Police.

The Association's final argument is with regard to the cost of living. It contends, "The average Cost of Living went up 9.1% during 1975 over 1974 as shown in City's Exhibit 9 and Union Exhibit 6."

It is the City's argument that:

"... Comparisons between Fire Departments must be limited to Wausau, Stevens Point, Marshfield and Wisconsin Rapids. Wisconsin Statutes 111.77 (6)(d) states that one of the factors to be considered in a municipal interest arbitration is a comparison between employees who perform similar services in 'comparable communities.' Both parties to this arbitration have introduced evidence that Wausau, Stevens Point, Marshfield and Wisconsin Rapids are 'comparable communities' ... The Union has, however, in one exhibit attempted to compare Wausau firefighters rates with the rates in nine other cities (Beloit, Brookfield, Eau Claire, Fond du Lac, Janesville, Manitowoc, Sheboygan, Superior and Waukesha). The City asserts that the Union has failed to prove that these nine cities are comparable to Wausau. Furthermore, the City believes that the great preponderance of the evidence

"Substantial evidence exists that the only comparable communities to Wausau are Stevens Point, Marshfield and Wisconsin Rapids. These cities are all within a radius of 50 miles from Wausau (City Exhibit No. 1). This radius is recognized as the extent of the retail market for Wausau and the source of much of its economic activity. (T-61) This same area contains the regional labor market tapped by Wausau commerce and industry.

* * *

"The Union's offer would give Wausau firefighters' wage increases of \$15.47 per month more than the increases obtained by the average firefighter in Wausau, Stevens Point and Marshfield. The percentage increase would also be substantially larger for Wausau firefighters than for the average firefighter in this three city area. (8.34% for Wausau firefighters versus 6.78% for the average."

The City further argues that its offer to the Fire Fighters of 6% in 1976 provides the Wausau Fire Fighters with the same percentage of increase as granted to other City and County employees. It further argues that "The City's wage offer, coupled with the 1975 wage increase, yields an increase for Wausau Firefighters equal to or in excess of the rate of increase for private sector employees in 1975 and 1976." The City's final argument is that :

"Increases in the Consumer Price Index in recent years do not justify wage increases for Wausau Firefighters beyond those proposed by the City in its final offer.

"During the arbitration hearing, the City presented extended testimony to the effect that the Consumer Price Index is an inappropriate measure of change in cost of living for firemen in the City of Wausau, Wisconsin (T-107 to 118). The Index based as it is on the urban wage earner's spending patterns, has no direct relationship to Wausau costs or wage rates.

* * *

"Even assuming arguendo the relevance of the Consumer Price Index, the City's offer remains reasonable. The Consumer Price Index (Nation, All Items) rose 7.0% from December, 1974 to December, 1975. (City Exhibit No. 9). As calculated from the City's Exhibit No. 12, Wausau firefighters received an average increase of 10.31% during this time. Furthermore, under the City's 1976 offer, the taxpayer's costs for a firefighter's time will increase 8.56% (T-66). This represents an increase of 1.65% more than the present rate of increase in the Consumer Price Index."

The arbitrator is, of course, bound by the provisions of 111.77(6) Wis. Stats. which sets forth the factors to which the arbitrator must give weight in reaching his decision. It is interesting to note that the statutory factors enumerated are not too different from the factors arbitrators generally employ in interest arbitration cases. The criteria of wage determination is analyzed in a study entitled "Arbitration of Wages" made by Professor Irving Bernstein of the University of California Institute of Industrial Relations. In his study, he points out that the most frequently used criteria is "Comparison of Wages" (inter-industry and intra-industry, while intra-company, intra-union and inter-union comparisons were rarely used. The second most cited criteria is that of "Cost of Living". Other criteria sometimes employed were: "Financial Condition of Employer", "Differential Features of the Work", "Sub-standards", "Productivity", and "General Economic Considerations". Both of the parties to this dispute place heavy emphasis on the "Comparison of Wages" factor which is set forth in Wis. Stats. 111.77(6)(d) as follows:

"(6) In reaching a decision the arbitrator shall give weight to the following factors: ...

(d) Comparison of the wages, hours and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employees generally:

1. In public employment in comparable communities.
2. In private employment in comparable communities.

..."

The Employer strongly urged that the most direct and forceful comparison is with other units of City government. Counsel for the Employer emphasizes that the wage offer to the Fire Fighters amounts to 6% "the same percentage increase as granted to other City/County employees". Counsel further argues "It is well established that an important consideration in determining the reasonableness of a final wage offer is its comparability with wage increases obtained by the employer's other employees." Union counsel points out that there are no historical bargaining patterns to give credit to the City's position. The arbitrator agrees and he can well understand the City's desire to keep all wage and salary adjustments on an equal basis. However, where there is no long and consistent pattern of historical relationships, it does not seem appropriate to anchor one unit of government represented by a union to the same wage pattern as that which may be bargained or granted to other units of government. Absent a well established historical bargaining pattern, it would seem unreasonable to bind one unit of government which by contract is free to bargain to the prior commitments made by other units of government or voluntarily extended to them.

In making comparisons with other "comparable communities" the Employer limits its comparison to those communities within a fifty mile radius (City Exhibit 1). It contends that there are only four cities within this radius which can be viewed as "comparable communities" within the meaning of the Statute. Those communities and their respective populations are as follows:

Wausau	33,031
Stevens Point	23,856
Wisconsin Rapids	18,099
Marshfield	16,637

The Employer contends that these four cities which are within a fifty mile radius constitute a well contained labor market area which it denominates as the Wisconsin River Valley Labor Market area. The Union on the other hand contends for a wider basis of comparison, i.e., a state-wide comparison of cities having a population of between 30,000 and 50,000, although it concedes that not all of these cities cited are directly applicable. Those cities together with the applicable 1976 wage rates as set forth in Union Exhibit 2 are as follows: (I have omitted the City of Beloit because no figures are available for its 1976 wage rate).

<u>CITY</u>	<u>POPULATION</u>	<u>1976</u>
Brookfield	32,000	\$ 1,127.00
Eau Claire	44,000	982.00
Fond du Lac	35,000	1,017.00
Janesville	46,000	1,164.00
Manitowoc	33,000	1,004.00
Sheboygan	48,000	988.00
Superior	32,000	970.00
Waukesha	41,000	<u>1,116.00</u>
	AVERAGE	<u>1,046.00</u>
Wausau	33,000	947.00 (Union proposal)
		<u>928.00 (City proposal)</u>
	DIFFERENCE	99.00 (proposal)

It is the arbitrator's opinion that at least two of these communities are not applicable to any valid comparison. Those are the City of Brookfield and the City of Waukesha, both of which are within the Milwaukee labor market area and not comparable to either Wausau or any of the other cities set forth in the exhibit. It should be noted, however, that even with the deletion of these two communities, the Association's proposal which will result in a 1976 monthly rate of \$947 is well below the wage level of all of the other cities listed in the exhibit.

While the City concedes that within the Wisconsin River Valley Labor Market area there are three cities other than Wausau which are directly comparable, it limits its comparison to Stevens Point and Marshfield excluding the City of Wisconsin Rapids. It gives as its reason for this exclusion the fact that Wisconsin Rapids has not settled its 1976 Fire contract. But more importantly, it excludes Wisconsin Rapids because as stated by counsel in his post-hearing brief: "... the traditionally high wage rates paid in Wisconsin Rapids' paper industry have had a great bearing on rates paid to Wisconsin Rapids firefighters (T-136). This localized labor market has overshadowed comparisons between Wisconsin Rapids and other Wisconsin River Valley cities (T-136). It has also resulted in unusually high wages and benefits for the Wisconsin Rapids firefighters." It should be noted that the 1975 wage rate at Wisconsin Rapids of \$924 compared with a Wausau 1975 rate of \$875, a difference of \$49 per month. The failure to include Wisconsin Rapids in the comparative statistics advanced by the Employer is a denegation of its own labor market concept. It should also be noted that the paper industry rates are also indigenous to the same labor market area which includes the City of Wausau.

As to the cost of living factor, the Employer disparages its usefulness and considers it "an inappropriate measure of change in cost of living for firemen in the City of Wausau." (TR-107-118) While the national CPI can be subject to question in its application to any specific urban center, it is nonetheless generally accepted as a reasonably fair measure of the percentage change in the cost of living. For example, the CPI rose 11% in 1974 and 9.1% in 1975. While the CPI may well be subject to question in its application to the City of Wausau, it is nonetheless an important factor and cannot be ignored.

In analyzing the several factors, the City in its exhibits and in its post-hearing argument, consistently analyzes the effect of the several offers over the two year period of the current agreement. In other words, it is viewing the wage reopener for 1976 as though the wage rates for 1976 were a part of the 1974 negotiations. This approach would be appropriate if the parties were arbitrating the appropriate wage rate for 1976 as part of the 1974 negotiations. However, the parties completed their negotiations for a two year contract leaving the question of the 1976 wage level the subject of separate negotiations pursuant to a wage reopening provision in the current contract. In a wage reopener case, arbitrators generally have taken the position that their consideration should be limited to only those factors which enter into the determination of what are the proper wage or salary levels for the period set forth in the reopener provision. The bargaining considerations which entered into the establishment of the wage levels for 1975 as well as all other economic and non-economic provisions of the current collective bargaining agreement are not a part of these proceedings; they cannot be viewed as part of a package deal. In short, in a wage reopener situation we are concerned only with the proper wage rate for the year 1976 and that part of the two year agreement which deals with the 1975 wage levels is over and done with. The proper wage rate for 1976 is our sole concern. In its approach to the issue, the Employer seems to be concerned with the total effect of the two year agreement. This arbitrator has no desire to examine the effects of the total agreement. His sole concern is limited to the comparative reasonableness of the final offers proposed by the City and the Association for the 1976 wage rate pursuant to the reopening provision of the collective bargaining agreement.

On the basis of all of the applicable factors, it is the opinion of the arbitrator that the final offer of the Association comes closer to the mark than that of the Employer. The Employer refused to give any consideration to the rates in Wisconsin Rapids even though concededly that City is clearly within the immediate labor market area. It contends that the Wisconsin Rapids rates are inapplicable because they are affected by the high paper rates which it should be noted are also in the same labor market area. Likewise, it is difficult to justify a complete rejection of fire department rates for cities of comparable size in the State, and to confine the wage comparison to those cities within a fifty mile radius. The evidence of the whole of

these proceedings does not suggest that the Wisconsin River Valley industrial area is a "tight little island" immune from economic influences of the rest of the State; and that in its cost of living it occupies a unique sanctuary in both the state and the nation. While it is true that the arbitrator, if he were free to set the wage level on the basis of his own independent judgment, might well arrive at 1976 wage levels different from both the final offer of the City and the Association, as between the two the arbitrator is persuaded that the Association proposal is the more reasonable on the basis of the whole of the evidence in these proceedings.

A W A R D

There shall be a \$72.00 per month increase from 1975 Appendix A rates for all Classifications within the bargaining unit, effective January 1, 1976.

Respectfully submitted,

Philip G. Marshall /s/
Philip G. Marshall

May 19, 1976