STATE OF WISCONSIN

ARBITRATION AWARD

In the Matter of the Petition of WISCONSIN RAPIDS FIREFIGHTERS LOCAL 1054, IAFF, AFL-CIO-CLC For Final and Binding Arbitration Involving Firefighter Personnel in the Employ of CITY OF WISCONSIN RAPIDS (FIRE DEPARTMENT)	Case XXV No. 20883 MIA-257 Decision No. 15043-A

Appearances:

Edward Durkin, 5th District Vice President, IAFF, appearing on behalf of Firefighters Local 1054, IAFF, AFL-CIO-CLC.

Mulcahy & Wherry, Attorneys at Law, by James L. Everson, appearing on behalf of the City of Wisconsin Rapids.

ARBITRATION AWARD:

On November 29, 1976, the undersigned was appointed impartial arbitrator to issue a final and binding arbitration award in the matter of a dispute existing between Wisconsin Rapids Firefighters Local 1054, IAFF, AFL-CIO-CLC, referred to herein as the Union, and the City of Wisconsin Rapids (Fire Department), referred to herein as the Employer. The appointment was made pursuant to Wisconsin Statutes 111.77 (4) (b), which limits the jurisdiction of the Arbitrator to the selection of either the final offer of the Union or that of the Employer. Hearing was conducted on January 26, 1977, at Wisconsin Rapids, Wisconsin, at which time the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. A transcript of the proceedings was made, and briefs were filed in the matter which were exchanged by the Arbitrator on March 21, 1977.

THE ISSUES:

There are two issues at impasse between the parties. The final positions of the parties are set forth below separately with respect to said issues.

UNION FINAL OFFER:

1. Amend Appendix A - Salary Schedule of 1975 by increasing every position in the bargaining unit by 8.5% effective January 1, 1976.

2. Add a new Article titled: Ambulance Duty Pay. $2.50 per day shall be paid to each member of the bargaining unit assigned to ambulance duty.

EMPLOYER FINAL OFFER:

1. 1976 wages - effective January 1, 1976.

2. Appendix A - 1976 Salary Schedule

POSITION	ANNUAL	BI-WEEKLY	HOURLY	DAILY *
Lieutenant	$13,100.00	$502.50	$4.50	$35.90
MPO-additional compensation	126.00	4.83	.04	.34
Firefighter				
After 5 years	11,950.00	458.36	4.10	32.74
After 4 years	11,850.00	454.52	4.07	32.46
After 3 years	11,740.00	450.30	4.03	32.16
After 2 years	11,640.00	446.46	4.00	31.89
After 1 year	11,200.00	429.58	3.85	30.68
Starting	10,900.00	418.08	3.74	29.86

* Holiday pay only

3. Certified EMT: $1.50 per day when assigned to ambulance duty at Station #1 for 12 hours or more in a duty day.[1]

DISCUSSION:

This discussion will set forth the respective positions of the parties separately on the two issues involved.

1976 SALARY SCHEDULE

The Union has proposed an 8.5% increase to all rates in Appendix A of the 1975 Agreement between the parties. The Employer has proposed a modification of Appendix A which would provide for a new salary schedule having the effect that the starting rate for firefighters would be increased by more than the 8.5% contained in the Union's offer and would result in less than 8.5% in all other steps of the firefighters rate, as well as the MPO and Lieutenant classifications, thereby compressing the schedule. The modified schedule as proposed by the Employer would result in a total increase to the employees of 7.83% versus the 8.5% increase embodied in the Union's final offer. Both parties have relied on the statutory criteria set forth at Wis. Stats. 111.77 (6)-(a through h). Both parties argue that the application of the aforementioned relevant statutory criteria will result in the conclusion that their respective position is the more reasonable. The Employer's primary reliance is on the statutory criteria found at 111.77(6)(d) which provides: "Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally: 1. in public employment in comparable communities; 2. in private employment in comparable communities." The Union also relies on the same criteria in making its case. The Employer has argued that in applying the criteria of 111.77 (6)(d) that: 1) the Arbitrator should compare firefighters in Wisconsin Rapids to firefighters within the central Wisconsin area and not to all Wisconsin communities having fire departments; 2) firefighters should be compared to firefighters and not to other municipal employees or to private sector employees not engaged in fire fighting duties; 3) rate comparisons with other communities of similar population show the Employer's offer to be reasonable; 4) firefighters have a superior position relative to other organized City employees; 5) comparison among private sector of employees indicates the wellbeing of firefighters.

The undersigned will discuss each of the arguments relating to 111.77 (6)(d) as set forth in the preceding paragraph. For the purposes of discussion the undersigned will group the Employer's arguments 1, 2 and 3 set forth in the preceding paragraph under the heading of Comparison With Other Communities and will treat arguments 4 and 5 separately.

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1) The original final offer of the Union contained a third issue involving the termination language to be embodied in the Agreement. During the course of the hearing the parties stipulated that the final offer of the Employer would be modified so as to incorporate the language proposed by the Union with respect to termination.

COMPARISON WITH OTHER COMMUNITIES

Both parties rely on comparison with other communities to support their respective positions. The Employer argues that the proper comparison should be limited to firefighters in the central Wisconsin area, while the Union urges a comparison with all cities in the State of the same approximate population. The primary difference between the parties with respect to community comparison is whether the suburban Milwaukee cities should be included for comparative purposes. The Employer has cited previous interest arbitration awards in which Arbitrators Marshall (City of Wausau, Decision No. 14291-A) and Johnson (City of Menasha, Decision No. 12531-A) held that the suburban Milwaukee cities of comparable size are in the Milwaukee labor market area and for that reason are not comparable to cities elsewhere in the state. The undersigned is satisfied that the Milwaukee labor market area argument is proper and that, therefore, no consideration will be given to cities of comparable size located within the Milwaukee area labor market.

The Employer has urged that the undersigned limit his comparison to Stevens Point, Marshfield and Wausau because they are comparable size communities in the central Wisconsin area. The Employer has cited Arbitrator Zeidler (City of Richland Center, Decision No. 13421-A) in which the Arbitrator established a rule of a fifty mile radius as a measure of comparability and limited comparisons within that radius; and further, the Employer has cited Arbitrator Johnson (City of Stevens Point, Decision No. 12452-A) in which the parties agreed to limit their comparisons to the central Wisconsin cities. This Arbitrator is not persuaded that the fifty mile radius theory found in the City of Richland Center case constitutes sufficient arbitrable authority as to be persuasive; furthermore, the limitation to the central Wisconsin cities in the Stevens Point case decided by Arbitration Johnson cited above was by the agreement of the parties and not by decision of the arbitrator. The undersigned, therefore, concludes that a comparison with other cities in the state of comparable size and circumstances is appropriate.

The primary thrust of the Employer's argument with respect to comparison of rates of communities of similar size falls into two categories:

1. Firefighters should be compared to firefighters and not to other municipal employees, and

2. A comparison of the rates for Wisconsin Rapids firefighters leads all other central Wisconsin communities and ranks the implementation of the Employer's offer fourth in comparison with other cities in the population grouping of ten to twenty-five thousand. The Employer has cited numerous arbitration awards, all of which the undersigned has read and considered with respect to its argument that firefighters should be compared to other firefighters. The undersigned shares the opinion of the arbitrators cited that comparison of the firefighters of Wisconsin Rapids to firefighters in other communities is proper. The conclusion urged by the Employer, however, with respect to firefighters' comparison and to no other employees is different from the conclusion arrived at by the undersigned. The Employer would ask that the Arbitrator consider only the respective rates in making the comparison and ignore all other factors. The Union on the same subject matter has argued that the comparison should be made which would preserve the wage leadership position that the firefighters in the City of Wisconsin Rapids have enjoyed historically. The undersigned is inclined to accept the Union's position with respect to wage comparison and the wage leadership position. While the Employer has urged that the basis for comparison should be the rate for firefighters and has cited Elkuri in support of that position where Elkuri says: "Without question the most extensively used standard in 'interests' arbitration is 'prevailing practice'. This standard is applied with varying degrees of emphasis in most 'interests' cases." The principle enunciated by Elkuri as to prevailing practice is certainly proper; however, this Arbitrator considers prevailing practice to go beyond the mere comparison of the firefighter rate in one community versus the firefighter rate in another community. Prevailing practice also includes the wage leadership question as urged by the Union, as well as the pattern of settlements entered into in other communities. The wage leadership and the pattern of settlements questions are also discussed by Elkuri in "How Arbitration Works" (3rd edition, 1973, at page 759 and pages 779 through 782 respectively). In considering the evidence presented, the undersigned notes that in the proceeding in the City of Wausau, it was the testimony of the Personnel Director for the City of Wisconsin Rapids that: "The traditionally high

wage rates in the paper industry have a great bearing on the wage scales that we end up paying in Wisconsin Rapids..... I think that that particular information to this point has been overshadowed by the economic factors in our own community."[2] From the foregoing testimony the undersigned is persuaded that Wisconsin Rapids has enjoyed a wage leadership position with respect to other cities in the central Wisconsin area. There is nothing in the record to indicate that this leadership position should be disturbed, particularly where the difference between the last offers of the parties is less than three-fourths of one per cent.

In reviewing wage comparisons with other communities of comparable size the undersigned concludes that the cities of Neenah and Menasha are perhaps the most comparable cities of all those submitted by the parties for comparison. In comparing population, the City of Wisconsin Rapids (18,138) is approximately at the midpoint between the populations of Menasha (14,997), and the City of Neenah (23,736). The Arbitrator further notes that the industrial tax base of the respective cities is supported by high content of paper making companies; and further that the same wage rate influence of the paper making industry is comparable in all three communities. From Exhibit C-17 the 1976 firefighter rate for the City of Neenah is $1,055 per month; for the City of Menasha $975.00 per month; the Union offer for Wisconsin Rapids would establish a firefighter rate of $1,002.79 per month. The adoption of the Union offer would place the firefighter rate for Wisconsin Rapids at approximately the midpoint between the City of Menasha and the City of Neenah, which correlates precisely with the midpoint position of the population of the City of Wisconsin Rapids when compared to the City of Menasha and the City of Neenah.

The undersigned is not persuaded that patterns of settlement are relevant in the determination of which final offer is more reasonable. If the difference between the parties were larger than three-fourths of one per cent, the pattern of settlement criteria would be of more significance. In reviewing the percentage increase for the year 1976 in cities of the population of ten to twenty-five thousand, the undersigned notes that the percentage increase ranges from a low of 6% to a high of 10%. (The city of West Bend firefighter rate increased 33% as a result of a newly established wage appendix and the Arbitrator has ignored this as not being representative of settlement patterns). The offer of either party would fall within the range of the pattern of settlement for the year 1976 and is not conclusive in this matter.

COMPARISON WITH PRIVATE SECTOR EMPLOYEES AND OTHER ORGANIZED CITY EMPLOYEES

The Employer has urged that the firefighters have a superior position relative to other organized city employees, and relies in part on comparison of take home pay of the firefighters compared to other city employees. The undersigned does not consider take home pay to be a controlling factor in arriving at a decision. The disparity between the treatment of deductions from pay are precarious at best. If one were to carry the take home pay argument to its ultimate conclusion then the number of dependents that one employee claims versus the number claimed by another employee would have more impact than any of the other factors considered by the Employer when analyzing take home pay.

The Employer has further argued that the amount of dollars negotiated for other city employees is less than the amount of the issue in the instant case. From the record it is clear that all settlements with represented employees have been made on a percentage basis. The police unit enjoyed an 8.25% settlement, while other units settled at 8.5%, with the exception of the streets department, which settled at 9.3%. Since all other units have been settled on a percentage basis; and because a percentage settlement tends to preserve the relationships for pay purposes between one group of employees and another, the undersigned concludes that the pattern established by percentage settlements with other units dictates that the 8.5% final offer of the Union more nearly fits the pattern of settlement with other represented units of the Employer than does the offer of the Employer at 7.83%.

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2) Exhibits A-8 and A-9.

The Arbitrator further notes that settlements in the private sector in the City of Wisconsin Rapids for the year 1976 were 7% in one instance and 10% in two others. Again, the 8.5% more nearly approaches the pattern of settlement established in the private sector within the City of Wisconsin Rapids. The undersigned concludes that a comparison of pattern of settlement within the City of Wisconsin Rapids is more valid than comparative wage data in the private sector for the City of Wausau as the Employer has urged.

COMPARISON OF FIREFIGHTERS EMPLOYMENT SITUATION

The Employer has argued that pursuant to 111.77 (6)(f), ss. that the economic benefits enjoyed by the Wisconsin Rapids firefighters should compel a finding for the Employer's position under that criteria. A careful review of Employer Exhibit C-9, which is a comparison of the costing of the Employer's and Union's offers, persuades the undersigned that in the instant dispute the comparison fails to establish that one or the other of the party's positions would be outrageous. While the Arbitrator agrees that the Employer's offer is generous, the Union position is not so far different as to make it outrageous. This conclusion is buttressed by the fact that the Union position preserves the status quo with respect to Appendix A, wage exhibit of the Collective Bargaining Agreement, whereas the Employer offer would modify that appendix significantly. In the opinion of the undersigned there is insufficient evidence in the record to justify a change from the former structure of wages as it had been embodied in the 1975 Agreement.

COST OF LIVING

The Employer argues that the cost of living figures support the reasonableness of his final offer. The parties at hearing and in their argument are in disagreement as to how the Consumer Price Index data should be applied with respect to the cost of living. The Union urges that the average cost of living increase for the year should be the basis for consideration; the Employer on the other hand contends that the percentage of increase of cost of living for the year should be calculated as a percentage, based on the amount of increase from the last date of the year 1975, to the last date of the year 1976. The undersigned is of the opinion that the Employer's method of calculating cost of living more accurately represents the impact of price increases than does the use of the average figures for the year as urged by the Union.

The Employer points out that the cost of living increase for the full year 1976 is 4.81%, and argues that his offer of 7.83% is greater than the increase in the cost of living for the year 1976 and, further, is greater than the increase of cost of living of 7.01% for the year 1975. The cost of living argument is not compelling in the mind of the undersigned. There is no question that the statutory criteria requires that cost of living be considered, but the impact of cost of living on wage settlements cannot be considered in a vacuum. In analyzing the settlements of the other represented employees of the Employer, the undersigned notes that the police unit settled on or about July 14, 1976, for an increase of 8.25%, when the cost of living for the preceding year was 5.59%. The clerical employees settled on July 28, 1976, for 8.5% when the cost of living for the preceding year was also 5.59%. The streets department settled on September 21, 1976, for 9.3% when the cost of living for the preceding year was 5.29%. Lastly, the engineers and technicians settled on September 29, 1976, for 8.5% when the cost of living for the preceding year was 5.29%. From the foregoing analysis the undersigned is satisfied that the parties in other negotiations with the City of Wisconsin Rapids agreed to terms that ranged from 2.66% more than the cost of living in the case of the police to 4.01% more than the cost of living in the case of the streets department employees. The 8.5% increase requested by the Union represents 3.59% more than the cost of living increase in the year 1976. The 3.59% above the cost of living increase for the firefighters is within the range of settlement discussed above. The undersigned, therefore, concludes that the cost of living argument advanced by the Employer is not persuasive.

TAX RATES AND ADDITIONAL COSTS

The Employer has argued that the Wisconsin Rapids taxpayers are already paying a high tax rate and additional costs are not warranted. The undersigned does not consider this argument to be relevant in that the issue of ability to pay has never been raised by the Employer. Furthermore, the difference between the respective positions of the parties is so narrow that the adoption of the higher offer is not likely to have any impact on the mill rate.

AMBULANCE DUTY PAY ISSUE

An analysis of the dispute on this issue shows that the Union is requesting a $2.50 per day payment for ambulance duty and the Employer is offering $1.50 per day. Further, the Union position would apply the ambulance duty pay to each member of the bargaining unit assigned to ambulance duty, while the Employer would limit pay for ambulance duty at Station No. 1 only for twelve or more hours in a duty day. The Employer has argued that this is the first occasion that ambulance duty pay is provided for between the parties, and that the Employer offer of $1.50 per day is more appropriate by reason of the comparison to the Wausau plan, which came into existence in 1975, than to the Marshfield plan which came into existence in 1973, and was increased to $3.00 per day in 1976. The Employer further argues that the Union position with respect to ambulance duty pay potentially would involve pay for standby duty for two additional men at Station No. 2, thereby doubling the cost of the Employer offer which provides for ambulance duty pay only to those assigned at Station No. 1.

The Union points out that the year 1976 is completed and that the only employees involved for the year 1976 are the two at Station No. 1, resulting in the Employer overstating the costs of the Union position by $1,825.00. The undersigned agrees that the calculation of the Employer for the year 1976 is overstated by the $1,825.00 figure, since only two employees would be affected for the year 1976 if the Union's position is accepted.

If the undersigned were not required to select the last offer of one or the other parties, and if the undersigned had the flexibility to determine this dispute on an issue by issue basis, he would be inclined to find for the Employer on the question of ambulance duty pay, primarily because of the newness of the program, and the reasonable position taken by the Employer that the new program should be given an opportunity to work. Since the Arbitrator is confined to selection of one offer or the other, and since the Arbitrator considers the question of wage rates for firefighters to be primary, the Union position with respect to ambulance drivers necessarily must be adopted in the instant matter.

AWARD

Based upon the statutory standards, the exhibits, arguments of the parties, and for the reasons as stated in the discussion above, the Arbitrator determines that the final offer of the Union be incorporated into the Collective Bargaining Agreement for the year 1976.

Dated at Fond du Lac, Wisconsin, this 5th day of April, 1977.

Jos. B. Kerkman /s/
Jos. B. Kerkman, Arbitrator