

RECEIVED

JUN 20 1979

In the Matter of the Petition of

APPLETON FIRE FIGHTERS LOCAL 257
IAFF, AFL-CIO

For Final and Binding Arbitration
Involving Fire Fighting Personnel
in the Employ of

CITY OF APPLETON (FIRE DEPARTMENT)

WERC WISCONSIN EMPLOYMENT
CASE CXII RELATIONS COMMISSION
No. 23975 MIA-408
Decision No. 16878-A

AWARD

I. HEARING. A hearing on the above entitled matter was held on April 30, 1979, beginning at 10 a.m. at the City Hall, Appleton, Wisconsin.

II. APPEARANCES.

For the Union:

LEROY H. WAITE, State Representative, IAFF

For the Employer:

DAVID F. BILL, Director of Personnel

III. NATURE OF THE PROCEEDINGS. This is a proceedings in final and binding final offer arbitration under Section 111.77 (4) (b) of the Municipal Employment Relations Act of the State of Wisconsin. An impasse existed between the parties with respect to an agreement on wages, hours and conditions of employment. The previous agreement expired December 31, 1978. On January 5, 1979, the Union filed a petition with the Wisconsin Employment Relations Commission to initiate compulsory final and binding final offer arbitration pursuant to Section 111.77 (3) of the MER Act. The Commission conducted an informal investigation through a staff member, Peter G. Davis, on February 14, 1979, and February 22, 1979. The investigator reported to the Commission on February 26, 1979, that an impasse existed. On March 2, 1979, the Commission found that an impasse existed within the meaning of Section 111.77 (3) of the MER Act, certified that conditions precedent to initiating final and binding arbitration were met, and ordered compulsory final and binding arbitration. The parties selected Frank P. Zeidler, Milwaukee, as their choice of arbitrator, and the Commission appointed him on March 23, 1979.

IV. THE FINAL OFFERS.

A. The City's Offer:

- "1. The City proposes a 7% increase in wages applied to each step of each classification effective December 31, 1978.
- "2. The City proposes that paragraph 'e' of Article 12A.3. of the labor agreement be deleted.
- "3. The City proposes that the following language be added to Article 12.A. of the labor agreement:
 - '4. Employees shall not be eligible for paid sick leave for absences resulting from injury or illness incurred while working for another employer for pay.'
- "4. The City proposes no further changes other than those previously agreed upon by the parties."

B. The Union's Offer:

- "1. A non-deductible dental plan with a \$17.00 cap, with the City and the Union agreeing on the plan.
- "2. An opener on the alarm room language, if there are any changes in wages, hours and working conditions, if and when alarm room dispatchers position is eliminated.
- "3. 7.1% wage increase retroactive to December 31, 1978.
- "4. The Union, Local 257 proposes no further changes other than those previously agreed upon by the parties."

V. FACTORS TO BE CONSIDERED. Section 111.77 (6) of the Wisconsin Municipal Relations Act is as follows:

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

"(a) The lawful authority of the employer.

"(b) Stipulations of the parties.

"(c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.

"(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 employes generally:

"1. In public employment in comparable communities.

"2. In private employment in comparable communities.

"(e) The average consumer prices for goods and services, commonly known as the cost of living.

"(f) The overall compensation presently received by the employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

"(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

"(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

VI. THE LAWFUL AUTHORITY OF THE EMPLOYER. There is a question of whether the Employer can meet the Union offer in this case. The Employer questions whether the Union and the arbitrator can force the City to do something which the City says is beyond the authority of the arbitrator to award. The Union proposal calls for a re-opener on alarm room language (Union Proposal 2). The Union proposal contains the following clauses:

".....if there are any changes in wages, hours and working conditions, if and when alarm room dispatchers position is eliminated." The City says that all matters relative to alarm room dispatchers have been resolved, so an award for the Union would be confusing at best. Thus it may be subject to challenge under Sec. 298 of the Wisconsin Statutes which is incorporated into Sec. 111.77. Sec. 298.10 says that an arbitrator's decision must be vacated, "...d. Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made." The Employer says a finding for the Union would result in an award that would not be final since it would result in the immediate re-opening of the agreement to negotiate an undefined matter.

The Union notes that its offer contains an opener on alarm room language, if and when the City changes the alarm room duties. It holds that this request should be automatic since public employee labor law allows for the mandatory negotiation of the impact of the employer changing working conditions of the employee. The City has not let the Union know how the duties are going to be effected, and the Chief has said that several ideas have been tossed about, and that he is willing to talk to the Union. The Union says that its issue should be accepted as a matter of course.

Discussion. The issue presented here is a threshold one. If it is decided for the City, there need be no further discussion on any other matters, since the arbitrator should not give an award which commands one of the parties to do something which is illegal, and since the arbitrator cannot separate out this issue.

The issue concerns the changeover in the system of receiving alarms and dispatching. The system is being changed to a "911" system in which emergency calls will be received by the Police Department and will be transmitted to the Fire Department. Alarm Dispatchers will go to the status of Firefighter. Business calls in the Fire Department during the day will be received by the Assistant Chief or his secretary. There were discussions on this changeover during negotiations, but the Union President says that there are station house rumors about what the impact would be. The Chief of the Department said that the description of the change was not given to the Union, because the Fire Department was not sure that the police could make the changeover by a target date of June 1. Further, there was a matter of "day watch" to be considered, which is the matter of who attends to alarms when the fire companies are out on duty. Some further exchange between the Fire and Police Departments was required.

The Union in effect is calling for a re-opener on Article 4 - HOURS OF WORK, C. which is as follows in the form agreed to (Un. 6, Emp. 2):

"The basic work shift for Alarm Room Dispatchers, (hereinafter called dispatchers) shall consist of eight (8) hours. The basic work schedule shall consist of a 15-day cycle worked as follows: 5 days on duty, 3 days off duty; 5 days on duty, 2 days off duty. The dispatchers shall alternate between the 3 pm to 11 pm and the 11 pm to 7 am shifts."

Article 5 - OVERTIME, A. 3., deals with overtime for dispatchers.

In considering the issue here, there are two matters to be decided. One is whether the award of an offer containing this type of a re-opener would be an ultra-vires exercise of authority by the arbitrator, and secondly, if it is not, whether the issue in itself has any merit.

As to the first matter, the arbitrator is of the opinion that the inclusion of a re-opener clause in a final offer does not necessarily lead to an inconclusive award, particularly if it is contingent on events yet to follow. The Union's offer contains two conditional clauses relating to changes in wages, hours and working conditions, and changes in the elimination of alarm room dispatchers. It is the contention of the City that the matter has been already settled, and the alarm room operators have been reassigned with other titles (Un. 6 and City 2, Item 18). However, the Chief indicated that the final arrangements in receiving alarms and dispatching still depended on certain problems the Police Department was having and that the situation of day watch had not been resolved. The arbitrator therefore holds that a re-opener if and when additional changes other than those decided upon take place, and if there is an impact on the firefighters, is in effect a re-opener on new changes which might be effectuated and which requires some duties by firefighters.

As to the merits of the proposed re-opener, in view of the considerable change in the way alarms are received and dispatching is to be handled, the request of the Union is reasonable, particularly when no normal plan and operating procedure was in existence at the time of the hearing.

VII. THE STIPULATIONS OF THE PARTIES. Both parties are not proposing any further changes in the previous agreements other than those agreed to in negotiations and those proposed. Union Exhibit 6 and City Exhibit 2 are the same exhibit and list 18 principal changes agreed to. The City says that the stipulations are significant for two reasons. The parties worked toward a voluntary settlement, the City having come to an agreement of ten proposals originated by the Union and the Union did likewise on five City proposals, while three were jointly worked out. The Union says likewise that it exhibited the spirit of give and take, and gave up benefits in order to get a settlement.

As to the stipulations, they exhibit a considerable effort toward voluntary settlement, perhaps with more effort exhibited by the City. However the stipulations do not clearly favor either offer.

VIII. THE INTERESTS AND WELFARE OF THE PUBLIC AND THE ABILITY OF THE GOVERNMENT TO MEET COSTS.

The City contends that while it has the ability to pay either of the offers, yet the Union offer would have an adverse impact on the interests and welfare of the City and its financial ability to pay.

City Exhibit 20 listed eight cities in the region and gave their full value rate and effective real estate rate. The following chart is an abstraction of a part of this table showing highest and lowest rates and comparison with Appleton rates.

Chart 1

<u>City</u>	<u>Full Value Rate</u>	<u>Rank</u>	<u>Effective Real Estate Rate</u>	<u>Rank</u>
Sheboygan	.03250	1	.02757	1
Appleton	.02930	3	.02512	3
Oshkosh	.02628	7	.02231	7
Green Bay	.02581	8	.02174	8

Of 186 cities in the state, Appleton was included in 86 with full value rates of .02500-.02999, with 84 cities below this bracket. It was one of 23 cities in this same bracket for effective real estate rate with 161 cities lower.

The City notes that Green Bay and Oshkosh, which have offered larger increases in total compensation than the City, have lower tax rates. Sheboygan, with the highest tax rate, settled for the lowest amount. Appleton with the third highest rate is settling for the fourth highest increase.

City Exhibit 21 showed that since 1975, Appleton has reduced 121 employees in public works to 111, 112 employees in Police to 106 and 108 positions in the Fire Department to 99. The City says that this demonstrates an effort on the part of the City at cost control, and it would not be in the interest of the public to grant the Union an increase through arbitration higher than the pattern established with other City units voluntarily, particularly under the economic climate that exists.

The Union says that the City did not argue inability to pay, so it must be assumed the City has the ability to pay.

Discussion. The City's main contention here, in the opinion of the arbitrator, is that it is not in the interest and welfare of the public to pay the Union's offer, because of a relatively high tax rate, because the Union's offer is higher than that obtained by other units through voluntary agreement, because the City has been making efforts at cost control, and because of the current economic state. The matter of economic conditions will be considered under the cost of living. The matter of comparison with other unions will be considered under comparability. In the matter of the tax rate, the City has an argument in attempting to maintain its relative status with other comparable cities. However, it should be noted that the city with the third highest rate is making the fourth highest offer. The conclusion here is that the City offer more nearly meets the guideline of the interests and welfare of the public by a slight margin.

IX. COMPARISON OF WAGES, HOURS, AND CONDITIONS OF EMPLOYMENT - BASE WAGES.

A. Comparable Communities.

The Union's list of cities for comparison includes Green Bay, Appleton, Fond du Lac, Neenah, Oshkosh, Menasha, Sheboygan, Manitowoc, Two Rivers and Kaukauna. The list of the City includes all those cities

except Two Rivers and Kaukauna. The City argues that the latter two cities are the smallest and lowest paid, and were not used in three previous interest arbitration cases by the parties, and should be disregarded.

Kaukauna is a Fox Valley city and Two Rivers is adjacent to Manitowoc. While the arbitrator will not disregard them in his review, he notes that their comparison has only a secondary value, and the City provides a list of more nearly comparable communities, either because of size and proximity, or proximity alone.

B. Comparison of Base Wages with Similar Cities.

Union Exhibit 13 compared base wages. Taking the eight most comparable cities (see above), Appleton was highest in 1978 with a top payment for 1978 at \$14,851. It was the highest since 1974. The Union says that its Exhibit 13 shows that Appleton is beginning to slip from its position of being first.

The proposed increases for base pay in each category is as follows:

Chart 2

<u>Classification (Top)</u>	<u>1978 Mo. Pay</u>	<u>Union Prop. 1979 Mo. Pay (7.1%)</u>	<u>City Prop. 1979 Mo. Pay (7.0%)</u>
Captain	1,397.60	1,496.83	1,495.43
Lieutenant	1,336.93	1,431.85	1,430.52
Assistant Mechanic	1,316.13	1,409.58	1,408.26
Driver Engineer	1,274.53	1,365.02	1,363.75
Assistant Driver Eng.	1,258.93	1,348.31	1,347.06
Squad Man	1,258.93	1,348.31	1,347.06
Alarm Room Dispatcher	1,259.67	1,349.11	1,347.85
Firefighter	1,238.13	1,326.04	1,324.80

The City's Exhibits 5 and 6 list the base pay of Firefighters for 1978 and for 1979 as proposed. For 1978 Appleton base pay was the highest in eight comparable municipalities. It would also be highest in 1979 under either offer. City's Exhibit's 7 and 8 list the base pay of the top Driver Engineer for 1978 and 1979. Appleton has the highest base pay for 1978 among the eight municipalities. For 1979, the offer of the Firefighters would keep Appleton with the highest base pay for Driver Engineer.

The following chart shows the increases in base pay in the eight comparable communities between 1978 and 1979 and percent of increase.

Chart 3

<u>City</u>	<u>Firefighter Inc.</u>	<u>% Inc.</u>	<u>Driver Eng. Inc.</u>	<u>% Inc.</u>
Green Bay	105	8.7	105	8.4
Oshkosh	88	7.5	88	7.3
Sheboygan	79.45	7.0	-	
Fond du Lac	89.26	7.8	89.26	7.6
Manitowoc	80	7.0	82	7.0
Neenah	85	7.1	85	6.9
Menasha	103	8.9	106	8.9
Appleton City	86.67	7.0	89.22	7.0
Union	87.91	7.1	90.49	7.1

Discussion. On the basis of base wage alone, although the City offer continues to maintain the top Firefighters and Driver Engineers in the first position among eight comparable communities, its offer in dollar amount for Firefighter is sixth, and for Driver Engineers, fourth. Also it has one of the lower percentage increases. On the basis of comparability for base wage increases alone in dollar amounts and percentage increases, the Union offer more nearly meets the guideline for comparability.

C. Comparison on Base Wages with Appleton Police.

City Exhibit 3 dealt with the 1979 settlement the City made with other employees. Because of the concept of parity between police and fire services which is sometimes used as a measure, the base settlement for Police, non-supervisory, and for Lieutenants and Captains is broken out of this exhibit for any value it may have in analysis.

Police (non-supervisory) with a pay rate of \$1,254.80, average, got 6% on their base effective January 1, 1979. They also got a \$10.00 a month increment on July 1, 1979. The net increase in base pay alone was 6.4%.

Police supervisors received a 6.7% increase on base pay.

Discussion. On the basis of base pay alone, not considering total compensation, the City's base pay offer to Firefighters more nearly conforms to the settlements with police. However because of the different benefits under each settlement, a conclusive judgment cannot be made until total compensation between the services is prepared, and this will be done later.

D. Comparison with Other Base Pay Settlements Made by the City.

City Exhibits 3 and 4a and b list settlements made with other employees. Some of these are two year settlements. The following gives the information on the second of two year settlements as far as base wage offers only:

Chart 4

	<u>1978 Avg. Rate</u>	<u>Inc. ¢/hr.</u>	<u>% Inc.</u>
Craft Employees	\$8.23	.60	7.3
Professional Employee	7.50	.55	7.3
Water Plant	6.49	.44	6.9*

*Total Package = 7.3%

The following is a summary of settlements negotiated at the end of 1978 with other employees and effective in 1979:

Chart 5

	<u>1978 Ave. Rate</u>	<u>Inc. ¢/hr.</u>	<u>% Inc.</u>
Average of 7 Teamster Locals	\$5.653	.357	6.3
Crossing Guards	3.19	.22	6.9

Union Exhibit 11 showed that base pay was increased 5.7% for teachers (Appleton Post-Crescent, August 28, 1978). The teachers are under a different governing board.

Discussion. On the basis of considering base wage alone, the offer of the Firefighters is more than the average of teamster settlements, and more than the settlements for Crossing Guards who are in a less skilled category. It is less than wage increases for craft and professional employees. As in the case of police comparisons, the decision must be reserved for a consideration of overall compensation. This will be done in Section XIII.

X. COST OF LIVING. The Union presented several exhibits on the cost of living and the Consumer Price Index (CPI). Union Exhibit 7 showed that the average annual change in the CPI of 1978 over 1977 was 7.7% for all urban consumers; and for wage earners and clerical workers it was 7.6%. The change for both groups from January 1978 to January 1979 was 9.3%. Union Exhibit 8 was a news account of April 29, 1979, to the effect that a typical family of four had to gross \$19,000 in 1978 or 9% more to maintain a moderate standard of living. Union Exhibit 9 reported that the CPI for March 1979 went up 1% (Appleton Post-Crescent, April 26, 1979). City Exhibit 14 was a statement of the Consumer Price Indexes for December 1978. The percent change for all urban consumers as well as the change for urban wage earners from December, 1978 was 9.0%. This exhibit also had the following information:

Chart 6

<u>Item</u>	<u>1967</u>	<u>1978</u>	<u>% Inc.</u>
CPI	100	202.9	102.9
Firefighter Monthly Rate	535	1238.13	131.4
Driver Engineer Monthly Rate	570	1274.53	123.6

The City does not question the rapid rise in the cost of living in 1978 and to date in 1979. However it says that the cost increase to the City is 9.2% of base pay for the City's offer and 10.6% for the Union's proposal. Further the City says that while the cost of living went up 102.9% since 1967, the base pay for Firefighter and Driver Engineer salaries went up 131.4% and 123.6%; and this does not include increases in the cost of benefits.

The Union says the Union's final offer totals 7.76%*, while the City's offer is less than 7% if one calculates loss of sick benefits.

Discussion. The City's basis of comparison for calculating percentage increases offered by the City in wage and fringe benefits appears to be on the basis of the base salary. The Union and the City come to disparate results as to what the percentage increases are. The arbitrator therefore seeks a common base of comparison and holds his judgment on which party more nearly meets the guideline on comparability to the Consumer Price Index change until the discussion of comparability on total compensation, and what the percentage increases are of each offer and how they compare to the average annual change of 1977 to 1978 of 7.7%.

XI. COMPARABILITY OF SPECIFIC FRINGES - LONGEVITY.

Before considering overall compensation, it seems desirable to compare specific fringes and their costs, since these figure importantly in overall compensation. The first matter to be considered is longevity, because the trade-off of longevity for dental insurance was considered in the negotiations.

Union Exhibit 14 presented the information on the longevity payments made by six cities. However the payments represented sums paid after different years of service, and there was no unit of time used for comparison. The arbitrator has therefore accepted with some reservation the longevity payments for Firefighters and Driver Engineers in City Exhibits 5, 6, 7, and 8. These are calculated after 20 years of service to achieve a comparison, and in the opinion of the arbitrator are to represent a cost above the actual total amount paid out. The City in its Exhibit 13 noted that average longevity for the whole department cost \$13.51 per month for 1978. It estimates its 1979 longevity cost will average \$14.97, an increase of 1.46, but still less than \$16.67 (work sheet 4a). This stands in contrast to the sum of \$16.67 per month used in its exhibits. Since longevity is not being changed in the new agreement, it is likely that the

*This is based on assuming that the dental insurance proposal will be in effect for only six months, and not one year.

cost of longevity would be nearer \$14.97 in the coming year than \$16.67. \$16.67 for longevity may represent a 0.1% overstatement of the City's probably actual cost per Firefighter.

The Union in its brief asserts that Appleton is eighth lowest among its ten comparable cities for longevity.

XII. COMPARABILITY OF SPECIFIC FRINGES - DENTAL INSURANCE.

Union Exhibit 16 was a list of 23 employers in the private sector with dental plans. However this is a small percentage of the total employees in the area, according to the testimony at the hearing.

Union Exhibit 17 was a tabulation of health insurance and dental insurance enjoyed by various classes of Appleton City employees and Appleton school teachers. Craft, professional, police, supervisory, laborer, waste water, and teacher employees all had a dental plan of varying costs, but transit employees and Firefighters did not. The total insurance benefits in dollar cost of all employees except teachers and transit workers exceeded the cost of insurance benefits afforded Firefighters.

Union Exhibit 18 was a listing of health insurance and dental costs for employees in the ten comparable cities used by the Union. Five had such plans. It was not known if there were plans in four other cities. Appleton was sixth in total known insurance benefits for a family.

City Exhibit 10 listed four pre-1979 settlements involving dental insurance for Appleton City employees. It compared the total cost of settlements with the cost of settling with the Firefighters. In the case of Teamsters (1972) and craft and professional employees (1977), the total settlement was less than the settlement for Firefighters who had no dental insurance. In 1976 waste water employees, and in 1978 police, received a settlement including dental insurance which was higher than the settlement for Firefighters by 0.4% and 0.1% respectively.

City Exhibit 11 a-b was an exhibit on the status of dental insurance and longevity with respect to various groups of organized Appleton employees. Conditions both of dental coverage and of longevity vary, with both family and single plan dental insurance being paid by the City, or only the single plan being paid, and in two instances with longevity payments being traded for a dental plan.

City Exhibit 12 a-b was a history of dental insurance negotiations between the parties since 1971. The request for dental insurance by the Union first appeared in a 1973 agreement. It appeared again in 1974, and 1975-1976, but it was dropped in the settlement. In each case the City said it would consider dental insurance, if it came out of the final package. The City re-affirmed this position in 1979, and suggested a trade-off of longevity for dental insurance.

The City's Position. The City does not dispute the fact that a majority of its employees have dental coverage, but notes that these were obtained as part of a package. Further in each case where a group of employees received dental insurance as part of a package, the Firefighters received a comparable or better package. The City says that it does not object to dental coverage in general, but in each case in the past, the Union opted for pay increases instead. What the City objects to now is the Union getting through arbitration what it could not get through voluntary negotiations. Further, if the Union prevails, it will be the only group of employees with both dental coverage and longevity.

The Union's Position. The Union says that the big issue in its final offer is dental insurance for the employees. It says that other cities in its list of ten comparable cities offer dental insurance, and the final offer would not be excessive. The Union says that although its list of private employers may comprise a small percentage of the businesses and industries of the area, the list is one of the larger employers.

Further, virtually all other City employees in the City have dental insurance. The Firefighters are asking for a plan which would have a cap \$2.41 less than what the police enjoy.

Discussion. The contentions of the Firefighters that on the basis of comparability they should have a dental plan must be considered in light of the historical experience shown in the City exhibits, and not solely on comparability. Dental plans are achieved as a part of a package, rather than in isolation. Therefore the position of the Firefighters on dental insurance becomes subordinate to their position on total costs of their package: are those costs more justifiable than the City's costs or not? This matter is discussed under the subject of total compensation.

XIII. OVERALL COMPENSATION.

Principal exhibits on overall costs were furnished by the Employer, and these shall be divided into a comparison of proposed cost on base wages and new fringes, and then into a comparison of overall compensation.

A. Total New Costs of the Offers. The following table is derived from City Exhibits 3 and 4:

TABLE I

TOTAL AVERAGE NEW COST OF OFFERS AND SETTLEMENTS
IN APPLETON BASED ON AVERAGE RATE OF PAYMENT

<u>Unit During 1979</u>	<u>Cost of Settlement</u>	<u>Cost as % of Avg. Rate</u>	<u>Impact at 1979 Year's End %</u>	<u>1st Year of Contract</u>
Firefighter				
Union Prop. 7.1% +				
\$17/mo. Dent. Ins.	109.17	8.4	8.4	
City Prop. 7.0%	90.87	7.0	7.0	
Police (Non-Supv.)				
6% + 13.72 Dent. Ins.	92.38	7.1	7.5	1978
+ \$10/mo., 7/1/79	(97.38/mo.)			
Police (Supv.)				
6.7% + 13.72 Dental	112.69	7.3	7.3	1978

<u>Unit During 1979</u>	<u>Cost of Settlement</u>	<u>Cost as % of Avg. Rate</u>	<u>Impact at Year's End %</u>	<u>1st Year of Contract</u>
Craft Employees	\$.60/hr.	7.3	7.3	1978
Professional Employees	.55/hr.	7.3	7.3	1978
Water Plant				
1.44/hr. + .037/hr. Dental	.476/hr.	7.3	7.3	1978
7 Teamster Units				
Local 563				
\$.357/hr. + .047 for ins.	.404/hr.	7.1	7.1	1979
Crossing Guards	.22/hr.	6.9	6.9	1979

B. Comparison of Total Compensation in 8 Comparable Cities.
The following information is derived from City Exhibits 5, 6, 7, and 8:

TABLE II

TOTAL COMPENSATION OF FIREFIGHTERS AND DRIVER ENGINEERS
IN 8 COMPARABLE CITIES

<u>City</u>	<u>Firefighter</u>		<u>Driver Engineer</u>	
	<u>1978</u>	<u>1979</u>	<u>1978</u>	<u>1979</u>
Green Bay	1515.68	1643.05	1555.64	1683.01
Oshkosh	1458.20	1574.90	1497.54	1614.25
Sheboygan	1491.15	1581.94		
Fond du Lac	1460.47	1558.69	1479.50	1576.14
Manitowoc	1446.41	1539.74	1470.51	1566.10
Neenah	1543.04	1641.19	1565.33	1663.52
Menasha	1454.77	1570.93	1499.95	1617.21
Appleton	1517.32		1558.31	
Union		1643.24		1685.34
City		1624.83		1666.89

C. Total Compensation Comparison Between Appleton Police and Fire Employees. The following is abstracted from City Exhibit 9.

TABLE III

TOTAL MONTHLY COMPENSATION, APPLETON FIRE AND POLICE
SELECTED CLASSIFICATIONS, 1978 AND 1979

<u>Classification</u>	<u>1978</u>	<u>1979</u>	<u>% Inc.</u>
Police Officer	1528.44	1641.59	7.4
Firefighter	1514.35		
Union Prop.		1639.60	8.3
City Prop.		1621.18	7.05
Driver Engineer	1555.43		
Union Prop.		1683.50*	8.2
City Prop.		1665.06*	7.05

*These totals vary slightly from Employer Exhibit 8.

Union Exhibit 15 presented information on what it contended was the percentage increase in 1979. It supplied no supporting data. The City challenged this chart and supplied its own figures in its brief. The two different sets of figures are presented herewith:

Chart 7

TOTAL COMPENSATION - FIREFIGHTER

<u>City</u>	<u>% Inc. Acc. to Union</u>	<u>% Inc. Acc. to City</u>
Kaukauna	10.5	
Sheboygan	9.5	6.1
Menasha	9.15	8.0
Oshkosh	9.1	8.0
Green Bay	8.5	8.4
Manitowoc	8.37	6.5
Two Rivers	8.0	
Neenah	7.8	6.4
Fond du Lac	7.77	6.7
Appleton		
Union Offer	7.76	8.3
City Offer		7.1

Union Exhibit 10 was a newspaper report of January 18, 1979, that Appleton non-union employees received average pay hikes of 7.1%, but 20 employees got merit increases that brought their pay increases to 9.5%, and two employees received pay increases of 4.6%.

City Exhibit 13 (corrected in a letter of May 14, 1979) stated that the 1978 average pay in the Union was \$1,368.62 and included in this was the average base rate, average longevity, and average holiday pay. It states that the City offer would cost \$126.54 and includes base rate, longevity, holiday pay, pension and insurance increases. It says this is an increase of 9.2%. The Union proposal is \$145.21 or a 10.6%. The total cost increase for the City under its proposal would be \$139,700.16. Under the Union proposal the cost would be \$160,311.84, or \$20,611.68 more than the City's proposal. The City lists its total 1978 costs for the items in City Exhibit 13 in a letter of May 14, 1979, to be \$1,967,322.63.

The City's Position. The City notes that it was second highest for total compensation of Firefighters in 1978, but is third highest in 1979, because Green Bay in an obvious catch-up situation went from third highest to highest. The City says that it closed the gap, however, between Appleton Firefighters and Neenah Firefighters which has been greater in 1978 and is less in 1979.

The City notes that the Union proposal makes Appleton Firefighters the highest paid in 1979.

As for Driver Engineer, the City was second in 1978 and stays that way in 1979, passing Neenah. Again, the Union proposal will put the City in the highest category.

The City adds that it would not seem appropriate for the Union to attain the high ranking through arbitration when it could not do so through bargaining, and cites Arbitrator Christenson in WERC Case XIV, No. 22524, MED/ARB-24 to this effect.

The City notes that it is unique among Wisconsin cities in that base pay for Firefighters is higher than that of police officers. Police total compensation lies between that of Firefighters and that of Driver Engineers. The Union proposal for 1979 would place Firefighters within \$2 a month of the police officer, and the gap between Driver Engineers and police officers would increase from \$26.09 to \$41.91 per month.

The City notes that in its Exhibit 9 which compares fire and police compensation it showed only compensation paid as a result of the labor agreement between the parties. It excluded FICA, employee's contribution to the Wisconsin Retirement Fund, worker's compensation, unemployment compensation, and the City's liability for special disability benefits for Firefighters resulting from state statutes. It is ludicrous to contend that police officers should be paid less, because a federal program requires that they must contribute a portion of their salary to it. Rather an argument could be made that they should be paid more.

The City says that the arbitrator should not give weight to the Union's contention that it is only asking a six month's coverage of dental insurance. The Union never stated that this was the case in negotiating its final offer.

The City also says that the arbitrator should give consideration to the effect the Union's proposal will have on the next contract.

The Union's Position. The Union says that its position showed that the Appleton Firefighters received the lowest final offer in comparison to wage and fringe benefits settlements in 1979 in its list of ten comparable cities. Further other Appleton non-union City employees received wage increases of 7.1% to 9.5%, while the City is offering the Firefighters 7% and taking away sick leave benefits. Also teachers received 8.7% to 13% for the 1978-79 school year. The Union challenges City Exhibit 13 on the ground that it shows no health insurance, life insurance, pension, clothing, sick leave, vacation, or other related costs to establish a true base cost to the City. It further challenges a City figure showing a \$7.98 per month insurance increase cost when ample testimony has shown no increase in cost since October 1, 1978. The Union also challenges the City's showing another increase in insurance of \$24.98 when the Union is asking for a six month coverage of dental insurance at \$17.00 for six months, or an average of \$8.50 per month for 12 months. Thus the City has inflated the cost of its own proposal by 2% and the Union proposal by 2.5%.

Discussion. The Union offer in terms of overall compensation advances the status of Appleton pay, with respect to comparable communities, while the City offer causes it to fall back for Firefighters as is shown in the following table:

TABLE IV

RELATIVE STATUS OF APPLETON TOP FIREFIGHTER AND
DRIVER ENGINEER TOTAL COMPENSATION WITH EIGHT COMPARABLE
COMMUNITIES FOR 1978 AND PROPOSED FOR 1979

Classification	1978 Pay	Rank in 8	1979 City	Rank in 8	1979 Union	Rank in 8
Firefighter	1517.32	2	1624.83	3	1643.24	1
Driver Engineer	1558.36	2	1666.89	2	1685.34	1

This information is insufficient on its own to judge which offer should be accepted. Looking next at the percentage increases offered in total compensation, the arbitrator made the following table for percentage increases based on the information found in Exhibits 5, 6, 7, and 8 of the City. This table is based on the assumption that the City would have to pay out \$17.00 a month for 12 months for dental insurance.

TABLE V

PERCENTAGE INCREASES OF TOTAL COMPENSATION OF 1979 OVER 1978
IN APPLETON OFFERS AND IN SEVEN COMPARABLE CITIES

City	A. Firefighters			B. Driver Engineer		
	1978 Total Comp.	1979 Total Comp.	% Inc.	1978 Total Comp.	1979 Total Comp.	% Inc.
Green Bay	1515.68	1643.05	8.4	1555.64	1683.01	8.2
Oshkosh	1458.20	1574.90	8.0	1497.54	1614.25	7.8
Sheboygan	1491.15	1581.94	6.1			
Fond du Lac	1460.47	1558.69	6.7	1479.50	1578.14	6.7
Manitowoc	1446.41	1539.74	6.5	1470.51	1566.10	6.5
Neenah	1543.04	1641.19	6.4	1565.35	1663.52	6.3
Menasha	1454.77	1570.93	8.0	1499.95	1617.21	7.8
Appleton	1517.32			1558.36		
City Prop.		1624.83	7.1		1666.89	7.0
Union Prop.		1643.24	8.3		1685.34	8.1

Inspecting this table, one finds that the City offer for Firefighters puts it at third highest, and the City offer for Driver Engineer percentage increase is fourth. The Union offer for both classifications results in a proposed increase of second highest.

Again, this information is not sufficiently determinative of which offer should be accepted, except that the Union's proposals more nearly meet the rise in the CPI than does the City's offer; and the City's proposal more nearly meets what has been negotiated with other unions in the City.

It is necessary also to look at comparisons within the City of Appleton to ascertain what weight this type of comparison should have. Based on City Exhibit 9, the arbitrator developed the following table:

TABLE VI

COMPARISON OF PERCENTAGE INCREASES IN TOTAL
COMPENSATION BETWEEN APPLETON POLICE AND FIREFIGHTERS
AND DRIVER ENGINEERS, 1978 TO 1979

Classification	Total Compensation*		% Inc.
	1978	1979	
Police Officer	1528.44	1641.59	7.4
Firefighter	1514.35		
City Prop.		1621.18	7.1
Union Prop.		1639.60	8.3
Driver Engineer	1555.43		
City Prop.		1665.06	7.0
Union Prop.		1683.50	8.2

*Amount stated for total compensation varies slightly between Exhibits 5, 6, 7, 8 and Exhibit 9.

Further, City Exhibits 3 and 4 show settlements apart from Firefighters for other employees costing from 7.4% to 6.9%, most being from 7.3% to 7.1% with one police settlement having an impact of 7.5%. The City proposal for the Firefighters is 7.0%, but this calculates to 7.1% on the data supplied in the letter to the arbitrator of May 14, 1979.

In the case of the Firefighters, and using the CPI increase of 7.7% as a norm, the City offer is under this by 0.6% and the Union proposal is over it by 0.4%, based on City estimates of total compensation. The Union offer more nearly conforms to the rise in the CPI.

Yet another aspect also needs to be considered, namely, that the Union holds that the cost of dental insurance would not be \$17.00 a month for the full year, but only for about six months. Under this assumption, the overall average total compensation for a Firefighter in 1979 would be \$1634.74 (\$1643.24 - \$8.50) or an increase of 7.6%.

The question then is whether the Union has made a valid assumption as to actual costs. The Employer holds that it has not made a valid assumption. The arbitrator, looking at the language of the Union proposal, notes that it does not say when the proposal is to begin. However, he does not believe it is within the arbitrator's power to make the assumption that the City will be liable for \$17.00 a month per employee only after a contract with a dental insurance company has been concluded, since the terms of the agreement are supposed to be retroactive to the first of the year.

Thus although the Union offer is more nearly comparable to the rise in the cost of living, it however is considerably higher than what the Police were able to achieve in terms of actual payment, and what other employees are getting either in a first year contract or in the second year of a two year contract. One of the comparisons that are required to be made by the statute is the comparison with other employees in the same government. Using this comparison, the arbitrator concludes that the City

offer, being at 7.1% for total compensation is more nearly comparable to what other employees were able to achieve and hence more nearly fits the guidelines of the factor of total compensation. The City's offer tends to provide some parity with Police in actual pay, if not impact, and does not alter relationships as much as the Union offer would.

XIV. OTHER FACTORS - SICK LEAVE INVESTIGATION.

The City is proposing to eliminate Article 12, Leaves of Absences, A, 3, e) which is as follows:

"e) The City shall notify the employee and the Union in writing before conducting any further investigation of the circumstances of sick leave."

This clause is a part of an article which grants eight hours of sick leave a month to a maximum of 720 hours. Under Section A., 3, in order to be granted sick leave, an employee must immediately report to the officer in charge the reason for absence and duration; he must keep the Chief informed, and submit a medical certificate for any absence of more than two days. He must permit the City to make such medical examinations or nursing visits as it deems desirable. Then there is the clause about the City notifying the Union and employee in writing before further investigation.

City Exhibits 15 and 16 provided information on 1978 Sick Leave Costs and 1978 Sick Leave Usage. The following information is extracted from these exhibits:

TABLE VII

INFORMATION ON 1978 SICK LEAVE COSTS AND USAGE FOR SELECTED GROUPS OF EMPLOYEES, CITY OF APPLETON

<u>Classification</u>	<u>Hrs. Pd/Hr. Sick Leave</u>	<u>Ave. No. of Employees</u>	<u>Ave. Cost Employee</u>	<u>Ave. Hrs. Off</u>	<u>% Time Off</u>
Fire					
Day Emp.	1.0	9.25	\$925.79	120.7	5.8
Line Emp.	1.428*	83.55	621.74	116.4	4.0
Police	1.0	95.46	365.81	49.0	2.4
City					
(Excl. Fire)	1.0	318.14	412.08	59.0	2.9

*An explanation was given in Exhibit 17, Section A, on how this figure of 1.428 hours paid for each hour charged was derived.

City Exhibit 17, Section B, was a listing of the potential of hours which could be used for sick leave by Firefighters, Police and other employees. Owing to the varying type of schedules, the following constitutes the potential hours of cost which could be used for sick leave in a three week period:

Chart 8

Firefighters	119.95
Police	112.00
Other	120.00

City Exhibit 19 shows that no other group of organized employees has language in the agreement like Article 12, A, 3, e) of the Firefighters' agreement.

The City's Position. The City says that its exhibits show that with basically the same potential cost for sick leave, that the Firefighters exceeded the Police and other employees in sick leave costs in 1978. The City contends that Article 12, A, 3 e) which is in no other contract, restricts its ability in sick leave administration. This language, according to the Union, was added because of the investigative procedures of one Assistant Chief, but he is no longer with the City.

The City says that the Union has challenged the right of the Chief to contact or visit an employee if it does not relate to an investigation of the use of sick leave.

The City says that in view of the above circumstances, its request to delete this language is reasonable.

The Union's Position. The Union says that the City's offer on sick leave would leave conflicting language in the agreement which could cause a dilemma to an arbitrator. As to whether or not other bargaining units agreed to such language, there were no exhibits. Further it is not fair to the Firefighters to compare them with others on the issue of sick leave costs, since they work 56 hours and other employees work only 40 hours.

Discussion. On the basis of Table VII above and on the basis of City Exhibit 19, Section B, the arbitrator believes that the City's position to delete Article 12, A, 3, e) is more reasonable since the City has made a case for checking the costs of sick leave, and since there is no comparable clause in any other contract like the one in the Firefighters contract.

XV. OTHER FACTORS - INSERTION OF A CLAUSE TO LIMIT THE CITY'S SICK LEAVE LIABILITY.

The City proposes that the following section be added to Article 12, A of the agreement:

"4. Employees shall not be eligible for paid sick leave for absences resulting from injury or illness incurred while working for another employer for pay."

There is currently in the agreement in Article 12, A, 2, the following clause:

"2. An employee may use and be paid sick leave for absences required by his off duty injury, illness or required dental care, emergencies or serious illness or injury at home, (including but not limited to, the hospitalization of his wife for birth of child). Doctor and dental appointments which are not emergencies must be made on off duty days."

The language of the City's offer does not include a change in Article 12.

There was a situation in 1977 in which a Fire Captain, S., was injured while working for a private employer. S. was told by the Fire Chief that he would be off duty without compensation pursuant to a 1964 action of the City Council. The Union and employee grieved on the grounds that Article 12, A, 2, authorized S.'s use of sick leave, and further the Employer violated the agreement by visiting the employee in the hospital without advising him and the Union in advance.

Arbitrator Donald B. Lee made an award for the grievant on June 13, 1978, on the grounds that Article 12, A, 2 clearly spoke to paid leave absences required by off duty injury (City Exhibits 18 a-b-c, Union Exhibit 19).

City Exhibit 19, Section A. shows that it secured a similar modifying clause in Teamster's agreements in ten units, and with the Waste Water employees.

The City's Position. The City says that its exhibits show that it was the policy of the City prior to the award of Arbitrator Lee to interpret existing contract language to exclude the use of sick leave or illnesses incurred while working for another employer. After the award, it secured in negotiating similar language in 11 of 12 1979 contracts, the Firefighters being the only exception.

The Union's Position. The Union holds that the City offer would introduce conflicting language into the agreement to produce terrible dilemmas for arbitrators in the future. The proposed language of the City could have broad and general interpretations as to how sick leave benefits could be received by Fire Department employees. Again, the actual contract language accepted by other departments is not shown. The sick leave clause was arbitrated and was lost by the City, and now in negotiation the City tries to get it free without offering anything in exchange.

Discussion. Several questions are raised by this proposal of the City. The first of these is whether the proposal is so defective that it ought to be rejected out of hand, since Article 12, A, 2, could have conflicting language. Although Article 12, A, 2 would still retain the language of off duty injury pay, proposed Article 12, A, 4 would by its language limit the scope of Article 12, A, 2, so that injury or illness incurred while working for another would be excluded.

This arbitrator has no problem with the work "injury" in proposed Article 12, A, 4. He does have difficulties with the word "illness". If an off-duty Firefighter suffers a heart attack while in the part-time employ of a private employer, is he to be denied use of sick leave? In

this sense, then, that the proposed clause is insufficiently defined to cover various conditions that may occur, the arbitrator believes that its introduction would produce new controversy. Until the City eliminates the conflicts inherent in its language, the arbitrator believes that the Union's offer is more reasonable.

XVI. OTHER FACTORS - THE PRESIDENTIAL GUIDELINE OF 7% TOTAL INCREASE.

Union Exhibit 10 was a news article of February 16, 1979, on the Presidential voluntary wage and price guidelines of 7% for the total of annual increases in wages and fringes. It noted modifications in order to maintain health and pension benefits at the same level. Union Exhibit 12 was a news article of March 22, 1979, in which there were some wage raises in Appleton of 9.4%, but the Personnel Director said that such a settlement was exempt, because the offer was made before the guidelines were announced.

In the hearing, a Union representative said he believed the Union offer met these guidelines.

The City's Position. The City says that the Union's offer exceeds the Presidential guidelines and claims that its position is supported by the following information:

Chart 9

TOTAL 1978 COSTS FOR ITEMS LISTED
IN CITY EXHIBIT 13

Base Rate	\$1,433,201.76
Longevity	14,915.04
Holiday Pay	62,839.68
Pension	349,030.95
Insurance	<u>107,335.20</u>
	\$1,967,322.63

In City Exhibit 13, which the City amended in its Brief, it calculated that under the City proposal the average increase for each of 92 employees would be \$126.54 and would amount to \$139,700.16, which is a 7.1% increase over last year.

Under the Union proposal the cost of \$145.21 on the average for each of 92 employees would come to \$160,311.84 or 8.1%. By adjusting the increases to reflect the contractually required uniform allowance of \$150 per year per employee, and basing the insurance increase on 7% as in the guidelines, the figures are 7.0% and 8.0%.

The City cites Arbitrator Johnson in WERC Case VI, No. 23021, MED/ARB-105, Decision No. 16546-B, to the effect that he, as an arbitrator operating under a public statute, could not make an award contrary to the federal governments stabilization policy.

The Union's Position. The Union says that the increased benefits under health insurance is small compared to wages. The Presidential guidelines are voluntary, and if other negotiated settlements in the Fox Valley and City of Appleton are acceptable, then the Union's final offer would be within the broad general guidelines.

Discussion. If the City's calculations in its brief are correct, both offers exceed the guidelines, the City's by 0.1%, and the Union's by 1.1%. The City's offer thus more nearly meets the Presidential guideline of 7%.

The question then is what force should these guidelines have on an arbitrator functioning under the Municipal Employment Relations Act? The City cites an arbitrator who has refused to exceed the Presidential guideline. In this matter, the arbitrator here believes that the Wisconsin statutes which have been cited earlier set down certain factors to be considered, e.g., comparability, cost of living, ability to pay, and so on. These are the primary factors to be considered. Until a prevailing practice establishes the Presidential guidelines as a guide in comparability, or other factor, it will be weighed along with arguments for or against an offer, but will not of itself be determining.

XVII. CHANGES IN THE PENDENCY OF THE PROCEEDINGS.

The Consumer Price Index continues to rise. However, this arbitrator believes that the proper measure to use is the change in the average annual CPI of 1978 over 1977, since if this agreement had been voluntarily settled in January, 1979, that standard would have applied.

XVIII. SUMMARY.

A summary of the factors involved with respect to the offers is now given.

1. The arbitrator does not find that the Union offer is barred, because it contains a re-opener on alarm room operators, nor that an award for the Union with this clause in it would lead to an inconclusive award.
2. The parties in their stipulations made a good faith effort to settle, perhaps with more effort on the part of the City which accepted more Union proposals than vice-versa.
3. The City, because of its relatively high tax rate among comparable communities, more nearly meets the guideline of the interests and welfare of the public with its offer.
4. On the comparison of offers with respect to increase in base wages alone, a conclusive answer cannot be made as to which offer meets this guideline best. Rather overall comparisons and comparisons of packages and total compensation are more significant.

5. As to the rise in the cost of living, the Union offer more nearly meets this guideline.

6. As to the offer on dental insurance, while most City employees have such a feature in their contracts, the features are part of a package. Thus the Union's request must be considered only as a part of the total package, and its comparable cost.

7. As to longevity payments, an issue raised by the Union as to why it should have its offer, this must also be considered as part of total compensation.

8. As to total compensation, City calculations base the cost of increase at 7.1% for the City and 8.1% for the Union. The arbitrator does not believe that he can modify the Union offer so that the dental insurance feature of \$17 per month per employee will hold for only six months. The City's total compensation is more comparable to what other employees of the City were able to achieve and still keeps Appleton Firefighters in a relatively high position among comparable communities. The City's offer on total compensation is more reasonable under the guideline of comparability.

9. As to the proposal for change in the sick leave clause as to investigation, the City has a justified and reasonable offer.

10. As to the proposal to limit the City's liability for injury incurred while the employee is working for another employer, the City offer is likely to produce grievances, and the Union offer is more reasonable.

11. As to Presidential wage guidelines, the Union proposal exceeds them by more than the City offer. However, the arbitrator while giving consideration to such guidelines, also must give weight to the factors stated in Section 111.77 of the Wisconsin Statutes.

12. As to changes during the pendency of the matter, the cost of living continues to rise, but the arbitrator uses as the standard to apply here the change in the annual increase from 1977 to 1978 which was 7.7%.

13. Of the factors listed above, the arbitrator considers as most weighty the comparisons of total compensation and the cost of living. With respect to comparisons of total compensation, the arbitrator believes that the City offer in actual cost more nearly meets comparison of increases to other Appleton City employees and is more weighty for final decision than the rise in the CPI. On this basis the City offer should be included in the agreement between the parties.

AWARD. The offer of the City of Appleton in its agreement with the Appleton Firefighters Local 257 should be included in the agreement between the parties.

Frederic P. Zeidler
arbitrator
June 18, 1979