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WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

\* \* \* \* \*

In the Matter of the Arbitration

Between

WAUWATOSA FIREMEN'S PROTECTIVE ASSOCIATION,  
Local 1923, IAFF

and

CITY OF WAUWATOSA (FIRE DEPT.)

\* \* \* \* \*

AWARD AND OPINION

Case LIX  
No. 27036  
Decision No. 18414-A  
MIA-518

APPEARANCES: John K. Brendel, Esq., Wauwatosa, for the Association

Douglas A. Cairns, Esq., Milwaukee, for the City

On November 12, 1980, the Wauwatosa Firemen's Protective Association, Local 1923, IAFF (referred to as the Association) filed a petition with the Wisconsin Employment Relations Commission (WERC) pursuant to Section 111.77(3) of Wisconsin's Municipal Employment Relations Act (MERA) to initiate arbitration. The Association and the City of Wauwatosa (Fire Dept.) (referred to as the City or Employer) had begun negotiations for a successor collective bargaining agreement to its agreement which expired December 31, 1980 but failed to reach agreement on all issues in dispute covering this certified unit of approximately 108 captains, lieutenants, firefighters, and motorpump operators. On February 3, 1981, following an investigation by a WERC staff member, the WERC determined that an impasse existed between the parties and that arbitration should be initiated. On March 4, 1981, the undersigned, after having been selected by the parties, was appointed by the WERC as arbitrator to resolve the impasse. She conducted an arbitration hearing on May 18, 1981 in Wauwatosa, Wisconsin, at which time the parties were provided a full and fair opportunity to present evidence and make arguments. A transcript of the proceeding was made. Briefs and reply briefs were exchanged and filed.

ISSUES AT IMPASSE

The parties were unable to resolve the following issues:

1. Salary schedule.
2. Term of the agreement.
3. Differential pay/injury pay.
4. Vacations.
5. Sick leave.
6. Holidays.

The Association's final offer is annexed hereto as Annex A; the Employer's final offer is annexed hereto as Annex B. Form 2 final offer arbitration under Sec. 111.77(4)(b) of MERA is applicable.

#### STATUTORY CRITERIA

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.

#### POSITIONS OF THE PARTIES

##### The Association

In its oral and written presentations at the arbitration hearing and in its post hearing brief, the Association emphasizes the salary issue. In particular, the Association highlights two main points to support its offer incorporating substantial salary improvements for 1981 and 1982. First, it notes that there is a need for a substantial salary "catch up" to remedy the declining salary position of the Wauwatosa firefighters during the past 5-6 years. In large measure the present low salaries for this unit was due to a 5.5% salary increase in 1978, 7% in 1979 and 7% in 1980 in contrast to more generous settlements (or awards) for firefighters in comparable Milwaukee area communities. In particular, the Association points out that Wauwatosa has fallen far behind West Allis, the most comparable community both in salary and in manning. Second, the Association argues that a substantial salary increase is needed in Wauwatosa because effective December 31, 1980 at 8 A.M., the City is providing full firefighting, inspection, and other fire and rescue services for the numerous buildings

and property located on the County Institutions grounds (referred to hereafter as County Institutions). This takeover of services formerly provided by county firefighting personnel (with only backup being provided by the Wauwatosa firefighters) represents, in the view of the Association, a substantial increase in job responsibilities for all Wauwatosa firefighters. This is true because the contractual arrangements not only mean additional direct responsibilities for personnel at Station 3 but for all Wauwatosa firefighting personnel since some prior responsibilities of Station 3 have been reallocated to other stations and all City firefighters must be familiar with and may sometime provide services at the County Institutions because of future assignments, either temporary or permanent. Moreover, these additional job responsibilities have been given to a department which is already understaffed when compared to West Allis, the most comparable community. In addition to these two primary reasons for justifying a substantial salary increase for Wauwatosa firefighters during the term of this disputed agreement, the Association believes that pertinent BLS cost of living data supports its current demands contained in its final offer.

The Association dismisses City arguments based upon difficulty to pay as self-imposed. In the Association's view, City officials formulated the 1981 City budget based on unrealistically low projections for 1981 salaries, particularly for firefighters. In addition, the Association advocates its two year agreement as superior because there has been (and continues to be) a general pattern of 2 year agreements for firefighters and other City bargaining units. Also, much of 1981 will have passed prior to the final resolution of this impasse.

On the remaining issues, the Association believes that its positions on more generous holidays, vacations and sick leave are supported by numerous comparables, particularly West Allis and Milwaukee which the Association claims are ahead "in every category of total time off no matter what the specific benefit might be termed." In addition to comparables, the Association argues equity and present practice to support its position on differential/injury pay whereby unit members would continue to receive from the City a check based on the gross difference between workers compensation (untaxed) and their regular pay (less tax on this difference only). Some language changes are also proposed by the Association.

For all the above reasons, the Association concludes that it has been modest in its requests and that its final offer should be selected as appropriate recognition of the abilities, skills, work load and number of services provided by Wauwatosa firefighters.

#### The Employer

The City supports its one year salary offer by characterizing its total of 11% for 1981 as generous while noting that the Association's 1981 salary demand actually amounts to 14.48% annualized. It further notes that the Association presented no data at all in support of its 1982 salary demand contained in the Association's final offer. In the City's judgment, its own salary offer represents a substantial catch up in 1981 for Wauwatosa firefighters, one which will significantly reverse the declining trend of Wauwatosa firefighters' salaries for the past six years.

The City rejects the Association's rationale that the December 1980 contract between Milwaukee County and the City

of Wauwatosa "taking over" firefighting services for the County Institutions is relevant because the City denies that these services substantially increase the work load or responsibility for members of this bargaining unit and thus, in the City's view, substantial salary increases are not justified. The City argues that the County Institutions present no new or significantly different risks, have generated little or no overtime, and do not effect, in any significant way, firefighters not stationed at the one station assigned responsibility for County Institutions. Moreover, a new fire station is being planned and will be built soon to serve the County Institutions, and, accordingly, the present use of Station 3 for County Institutions is temporary only.

As for the Association's cost of living arguments in support of its higher salary package, the City introduced evidence that the latest data for the first two months in 1981 produces an annualized rate of 8.4% for 1981, a figure more in line with the Employer's offer than that of the Association.

Additionally, on the salary issue, the City presented two more arguments. First, it raised a difficulty to pay argument noting that even if its offer were to be chosen, there would be a projected deficit of \$17,000.00 for 1981 in the City budget. Since the Association's salary package would require an additional \$80,000.00 to finance salaries in 1981, this budgetary deficit would be drastically increased if the Association's final offer were to be selected. Costs for additional leave demands of the Association would also increase the projected deficit significantly. In addition, the City argues that only its offer is in line with 1981 salary increases given to or negotiated with other groups of City employees. The 1981 police salary settlement, for example, is 11% while the DPW workers agreed to an annualized salary increase of 10.5%.

To support its change to the way the City currently supplements workers compensation payments for work-related injuries, the City points out that the present formula results in a greater net take home pay for injured employees than the take home pay for employees on active work status receiving similar gross pay. The additional "windfall" for an employee varies from 20-31% more than an employee's regular take home pay because taxes are assessed on the differential pay only, not the workers compensation portion. The City notes that its police unit adopted these proposed procedures several years ago and there have been no special problems of implementation.

The City is equally critical of other Association demands. On the holiday issue, the City argues that there are no appropriate comparables to support the Association's demand. The larger cities are less willing to have generous holiday time off because they, like Wauwatosa, do not utilize volunteers and these departments have less flexibility in contrast to those communities which utilize firefighter volunteers. The Association's holiday demand, in the judgment of the City, will necessarily adversely affect City firefighting manning levels or will be very expensive because of the need to finance a substantial additional amount of callback time at overtime rates for existing firefighters. As to the Association's vacation demand, the City expresses similar concerns which are compounded by the Association proposal calling for an additional "pick" (increasing the present contractual provision from 5 to 6 picks). Finally, on the sick leave demand, the City argues that there has been no demonstrated need for the improvements sought by the Association, that the present system is working well for the vast majority of firefighters and that the present system is a reasonable cost to the taxpayers and is in line with other City employees' sick leave provisions.

## DISCUSSION

The City of Wauwatosa ranks third in population in Milwaukee County, after the City of Milwaukee and West Allis. Since the recent "takeover" of firefighting duties from the County for County Institutions, approximately 10,000 more people are served by the Wauwatosa Fire Department, making it more comparable in population to West Allis for firefighting services. In addition, although the County Institutions complex may represent no new risks than those already in existence in the City, this extensive complex of institutions and property including hospitals, mental institutions, and juvenile detention housing, represents a significant addition in the number of fire calls as well as presenting firefighting difficulties due to special security measures needed for equipment and unique building features based on the nature of these institutions and the populations served.

While both the City and the Association agree that the salary issue is of major significance, they differ widely in their final offers on this issue. The City is offering for 1981 10% plus 1% "as a buy out of injury pay provisions" while the Association is demanding 12% as of 1/1/81 and 4% as of 7/1/81. In addition, the Association is seeking a two year agreement with a salary increase of 10% on 1/1/82 and 1% as of 7/1/82.

On the other matters in dispute, all with substantial economic impact, the parties also differ significantly. Resolving this dispute is a difficult matter, particularly since there appears to have been little pre-impasse bargaining.

The City primarily justifies its final salary offer on the basis that it is in line with other City settlements, provides some significant catch up with comparable communities (both local and state wide) and will not be a financial disaster for the City which has already levied taxes for the 1981 fiscal year. On the other hand, the Association relies heavily for justification of its final offer package upon comparability data, particularly West Allis, the most comparable community, as well as the increased responsibilities being performed by Wauwatosa firefighters since the County Institutions takeover.

It is difficult to conclude that the City's 1981 salary offer of 10% (plus a 1% formally characterized by the City as a "buy out") is "generous" or includes a substantial catch up with comparable firefighters, either locally or state-wide, since this offer follows salary increases for this bargaining unit of 5.5% in 1978, 7% in 1979 and 7% in 1980. It does little to bring Wauwatosa more into line with West Allis, the most comparable community in this proceeding in the judgment of this arbitrator (particularly considering the more generous staffing found in West Allis). Moreover, despite documented increases in fire alarm responses resulting from the "takeover" of County Institutions, the City has offered no salary recognition for this increase in responsibilities which directly or indirectly affects all Wauwatosa firefighters (because of the realignment of responsibilities). Only twelve of the County's twenty-four firefighters have been hired by the City since the "takeover". Even with greater efficiencies, there is an impact which merits some recognition. On the other hand, it is difficult to find justification for all the specifics of the Association's two year salary package. Starting with a 12% increase as of January 1, 1981, the package also requires a 4% increase as of July 1, 1981. A 10% salary increase effective January 1, 1982 is then calculated on this compounded amount

with a 1% salary raise compounded on this salary increase effective July 1, 1982. Unfortunately, the Association fails to provide any rationale for its 1982 salary proposal and, except for its general arguments relating to the need for "catch up" and additional pay for additional responsibilities, it also fails to offer supporting reasons for the particular pattern of salary increases found in its 1981 salary proposals.

According to both parties, Wauwatosa firefighters' salaries as of 1980 are behind where they should be and need some "catch up" in 1981. While the City correctly argues that it is unrealistic to expect to catch up in one year since the backwards salary slide for City firefighters took place over 5 or 6 years, yet it is difficult to discern any significant catch up in the City's 1981 salary offer. In view of the "buy out" element of 1%, the City's salary offer to its firefighters may be viewed as a lower increase than that being received by other City employees. It clearly does little to bring Wauwatosa into the same league as neighboring West Allis which provides firefighting services for a similar population with a larger staff. Accordingly, if salary were the only issue in dispute, despite the deficiencies and concerns noted above relating to the Association's salary offer, the undersigned believes that the Association's final offer on this issue more closely approximates the statutory criteria set forth in Section 111.77(6) than does the salary offer of the City. She also believes that the existing pattern of two year agreements for City bargaining units reinforces her above conclusion on the salary issue. The City's budget development processes would be helped if 1982 firefighter salaries were certain at this time.

On the differential/injury pay issue, the arbitrator believes that the City's proposal is more reasonable. Since workers compensation payments are designed to be income substitutes, there is no justification for any employee receiving more net income as a result of job related injuries covered by workers compensation and supplementary differential or injury pay than he or she would receive if working. The City's approach on this issue has been tested over the past few years in the police unit and appears to present no special problems of implementation. Looking at the practices of comparables on this issue is not helpful since many municipalities appear to be continuing to implement a payment process found to be illegal according to the IRS, or have a completely different system for injury pay. Since the City's proposal will transfer the tax windfall previously received by injured unit members to the City, it is appropriate to make this change by the buy out route, as proposed by the City. If this were the only issue in dispute in this proceeding, the City's position would be selected.

Turning finally to the remaining areas in dispute, holidays, vacations and sick leave, the arbitrator believes that the Association has presented comparability data to indicate some support for each of its proposals, although the data provided concerning local and statewide comparables presented by both parties indicates a wide variety of practices. For understandable reasons, the City expresses serious concern over the implications of implementing the Association's proposals in these areas at this time, since they will result in either increased understaffing or costly call backs to provide adequate firefighting staffing. While the arbitrator is sympathetic to some improvements for bargaining unit members in these three areas, the economic or staffing price for all improvements contained in the Association's final offer when combined with the costs of the Association's salary proposals produces a total package which is unrealistically costly for the Wauwatosa

public. The Association's offer requires substantial, expensive improvements to be implemented fully during a single contract term. As has been pointed out by many others, it is unrealistic to expect to make up for relatively poor salary levels extending over multiple years at one time. That is also true for improvements in numerous fringe benefit areas which have lagged behind over multiple years. The cumulative costs of the Association's two year package are exceedingly high, either in terms of undermanning or salary costs to assure adequate staffing. Since the arbitration process is not designed to correct all inequities in one proceeding, the arbitrator has determined with great reluctance to select the final offer of the City despite its shortcomings in the salary area and in its failure to include any improvements in the areas of holidays, vacations, and sick leave.

Since the City's final offer is for one year only and since negotiations must soon begin for a successor agreement, the arbitrator hopes that the parties will engage in meaningful bargaining to remedy the salary and fringe benefit deficiencies she has noted above. The need for significant catch up and for appropriate recognition of the increased work load of City firefighters remains to be resolved in future agreements.

#### AWARD

Based upon the statutory factors, the evidence and arguments presented by the parties, and the discussion set forth above, the Arbitrator selects the final offer of the City and directs that it be incorporated into the parties' 1981 collective bargaining agreement.

Dated: August 21, 1981  
Chilmark, Massachusetts

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June Miller Weisberger  
Arbitrator

ASSOCIATION PROPOSAL - FINAL OFFER 1/22/81

Article 16: Salary

Sec. 1:

All monthly salary steps in the 1980 salary schedule for unit employees shall be increased by 12% commencing 1/1/81 and an additional 4% on 7/1/81.

Commencing 1/1/82 all steps shall be increased by 10% and on 7/1/82 by an additional 1%.

Article 35: Term

Change dates to read effective 1/1/81 and effective 12/31/82; balance of article per existing.

Article 20: Holidays

Commencing 1/1/81 each employee shall receive 7 off-duty days from his normal work schedule as a holiday allowance in recognition of the following holidays:

New Year's Day	Independence Day
President's Day	Labor Day
Good Friday	December 31
Memorial Day	

Commencing 1/1/82 each employee shall be granted 2 additional off-duty days as holiday allowance in recognition of Thanksgiving Day and Christmas.

Employees required to work on any holiday shall do so at straight time unless extraordinary services are required of the employee per Article 4, Sec. 5.



ASSOCIATION PROPOSAL - FINAL OFFER 1/22/81

Article 11: Vacations

Sec. 1 - for 1981, as is.

Sec. 1 - Commencing 1/1/82, employees shall be entitled to vacations as follows:

- a) 5 duty days after 1 year of service.
- b) 7 duty days after 7 years of service.
- c) 10 duty days after 15 years of service.
- d) 12 duty days after 22 years of service.

Sec. 2 - As is, except increase from 5 men to 6 men permitted to make selections from each series in 1982.

Article 21: Differential Pay

All full-time personnel shall receive full pay less the amount of worker's compensation received by the employee, plus fringes, when absent from scheduled duty due to work related, as defined in Ch. 102, Wis. Stats., injury or illness, for a period of not more than 52 consecutive weeks during the period of such disability and without affecting his regular sick leave entitlements. An employee unable to perform all substantial requirements of the employee's regular and normal duties next preceding the date of injury or illness shall be considered temporarily disabled for purposes of this provision until determined by Worker's Compensation Board to be permanent total disability. In the event an employee has returned to work for a consecutive period of 4 calendar months without absence by reason of such injury or illness, any subsequent absence shall be deemed to be a new injury or illness.

All payments compensating the employee for permanent partial or permanent total disability shall be the sole property of the employee. Any employee determined by the Worker's Compensation Board to be permanently totally disabled shall be considered as retired.

ASSOCIATION PROPOSAL: FINAL OFFER

Article 12: Sick Leave

Sec. 1:

Sick leave is earned at the rate of 18 hours per month (2/3 of a duty day) of service. Unused sick leave may be accumulated throughout the employee's course of employment up to a maximum reserve of 2880 hours (120) days.

Sec. 2:

Unused sick leave may be used as needed by an employee due to illness or injury or major dental care of the employee or to a member of his or her immediate family, providing however, that in no event shall sick leave be extended beyond 3 duty days per occasion for any single injury or illness sustained by any immediate family member as defined in Article 14, Sec. 1. In the event leave is taken due to immediate family illness, the employee shall identify the family member and shall specify whether the leave is required due to medical or dental ailments but nothing further. Any information submitted is done solely for employee informational purpose and shall be held strictly confidential.

Sec. 3:

Employees shall promptly advise the Fire Chief of the reason for absence and submit a medical certificate or report from an attending physician for any absence lasting longer than 2 duty days duration, upon request of the City; (i.e. if he does not report on time due to illness on his third duty day). Thereafter, the City, at its option, may require the employee to submit to a medical examination by a duly licensed physician of its choice.

Sec. 4:

Upon retirement or termination due to job related disability, an employee shall be paid a sum equal to his current hourly pay for 50% of all accumulated hours of unused sick leave up to a maximum of 720 hours total accumulation. (15 paid duty days maximum)

FINAL OFFER  
OF  
THE CITY OF WAUWATOSA

PROVISIONS OF EXPIRED CONTRACT, EXCEPT:

1. STIPULATION DATED 12/23/80.

2. TERM:

1 YEAR CONTRACT EFFECTIVE JANUARY 1, 1981  
(SEE ATTACHMENT A)

3. WAGES:

10% GENERAL WAGE INCREASE, EFFECTIVE DECEMBER  
28TH, 1980. 1% GENERAL WAGE INCREASE, EFFECTIVE  
DECEMBER 28, 1980 AS A BUY OUT OF INJURY PAY  
PROVISIONS. (SEE ATTACHMENT B)

4.

ARTICLE XXI  
DIFFERENTIAL PAY

DIFFERENTIAL PAY SHALL BE DEFINED TO BE THE DIFFERENCE BETWEEN THE AMOUNT OF WORKERS COMPENSATION AND THE NORMAL NET PAY.

ALL FULL TIME PERSONNEL WHO SUFFER AN OCCUPATIONAL INJURY OR ILLNESS SHALL RECEIVE DIFFERENTIAL PAY DURING SUCH PERIOD OF TEMPORARY DISABILITY FOR A PERIOD NOT EXCEEDING 1 YEAR OR THE DEATH OF SUCH EMPLOYEE, OR A REQUEST FOR OR COMMENCEMENT OF DISABILITY PAY UNDER WIS. STAT 66.191.

AFTER FOUR CALENDAR MONTHS OF NO RELATED ABSENCE ANY SUBSEQUENT INJURY OR ILLNESS SHALL BE DEEMED TO BE A NEW INJURY OR ILLNESS FOR PURPOSES OF THIS SECTION.

(ATTACHMENT A)

ARTICLE XXXV  
TERM OF AGREEMENT AND NEGOTIATIONS

THIS AGREEMENT SHALL BECOME EFFECTIVE AS OF JANUARY 1, 1981 AND REMAIN IN FULL FORCE AND EFFECT TO AND INCLUDING DECEMBER 31, 1981 AND THEREAFTER SHALL BE CONSIDERED AUTOMATICALLY RENEWED FOR SUCCESSIVE TWELVE MONTH PERIODS UNLESS PROCEDURES ARE INSTITUTED IN ACCORDANCE WITH SECTION 111.77 OF THE WISCONSIN STATUTES. IN THE EVENT SAID PROCEDURES ARE INITIATED, NEGOTIATIONS SHALL BE INSTITUTED PRIOR TO SEPTEMBER 15 OF ANY YEAR IN WHICH SUCH REQUEST FOR NEGOTIATIONS IS FILED. IN THE EVENT THE PARTIES DO NOT REACH WRITTEN AGREEMENT BY THE EXPIRATION DATE, THE EXISTING AGREEMENT SHALL BE EXTENDED UNTIL A NEW AGREEMENT IS EXECUTED.

(ATTACHMENT B)

APPENDIX A

1981

BI-WEEKLY

SALARY SCHEDULE

POSITION	STEP ONE	STEP TWO	STEP THREE	STEP FOUR	MAXIMUM
CAPTAIN	712.44	736.04			962.14
LIEUTENANT	611.77				869.07
MOTOR PUMP OPERATOR	597.35				826.71
FIREFIGHTER	700.77	719.68	740.65	762.68	786.60

SECTION 2. ANY EMPLOYEE WHO SHALL BE DESIGNATED AS AN "ASSIGNED DRIVER" OR "TILLERMAN" SHALL RECEIVE A PREMIUM OF \$3.00 DAILY COMPUTED ON THE BASIS OF ACTUAL HOURS WORKED AS AN "ASSIGNED DRIVER" OR "TILLERMAN".