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STATE OF WISCONSIN

AUG 18 1981

ARBITRATION AWARD

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Arbitration between
CITY OF WATERTOWN (FIRE DEPARTMENT)

and

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS,
LOCAL 877, AFL-CIO

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: Re: Case XXIII,
: No. 27204
: MIA-529
: Decision No. 18503-A
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Appearances: For the City of Watertown: James R. Scott of Lindner, Honzik, Marsack, Hayman & Walsh, S.C., 700 North Water Street, Milwaukee, Wisconsin 53202. Mr. Scott was accompanied at the hearing by Mayor Ken Thiel and Fire Chief Don Asmus.

For the Union, International Association of Fire Fighters, Local 877, AFL-CIO: Mr. Leroy H. Waite, International Vice President, 1993 Colony Court, Apt. #2, Beloit, Wisconsin 53511, and Mr. Richard A. Gallup, President, Local 877, 202 West Green Street, Watertown, Wisconsin 53094.

The petition for arbitration in this matter was filed by the City of Watertown on December 15, 1980. Following an investigation and mediation by the staff of WERC, the Commission, in an order issued on March 12, 1981, certified that conditions precedent to the initiation of final and binding arbitration had been met. Subsequently the parties selected the undersigned from a panel of arbitrators submitted to them by WERC. The arbitrator was notified of his selection by letter dated April 13, 1981. A hearing was held in Watertown on June 17 and the parties were given an opportunity to present evidence from witnesses and documents. No formal record was made other than the arbitrator's handwritten notes. At the conclusion of the hearing the parties agreed to exchange briefs through the arbitrator. That exchange was ultimately made on August 7 and the record is considered closed as of that date.

The Final Offers

The final offers are attached to this report as Appendix "A" (the Employer's final offer) and Appendix "B" (the Union's final offer). Health insurance and funeral leave, although included in the Employer's final offer document, are not disputed issues.

Positions of the Parties

In terms of the criteria listed in the statute the Employer presented evidence on comparability with another fire department in a nearby community, comparability with settlements made in other units of employees of the City, settlements in thirteen nearby government jurisdictions, and changes that have been

occurring in the cost of living.

The Employer asserts that the only other organized fire department in Jefferson and Dodge Counties (Watertown is in both counties) and the one with which the Watertown Fire Department should be compared is in Beaver Dam, a city about twenty miles away from Watertown. Beaver Dam has a population of 14,514 as compared with Watertown's 17,311.* The top rate in 1981 for a fire fighter in Beaver Dam was \$16,228 as compared with the Employer's final offer of \$16,998 for a Watertown fire fighter. A lieutenant's annual rate in Beaver Dam in 1981 was \$17,771 whereas the Employer's final offer for that classification is \$17,968. In Beaver Dam the Emergency Medical Technician rates are built into the base, as the Employer is proposing to do in Watertown. Maximum accumulation of sick leave in the Beaver Dam Fire Department is 1,008 for employees hired after 1973 and 2,016 for employees hired before 1973, as compared with the Employer's offer in this dispute of 1,248 for fire fighters and 848 for fire prevention and inspection employees. Beaver Dam offers no life insurance to employees while this Employer is offering \$5,000 term insurance. Other conditions for the Beaver Dam Fire Department employees are generally less favorable than similar conditions for Watertown Fire Department employees.

The Employer introduced data purporting to indicate that there has been a disparity between fire fighter and police wages in Watertown since 1972. The Employer offer would maintain that differential at about the average of what it has been during the past eight years. According to the Employer the Union final offer would narrow the differential and would also provide for a wage increase of such a greater magnitude that it would create future bargaining problems with the police. In addition, the settlements for the police and the Department of Public Works units for 1981 are substantially along the lines of the Employer's final offer in this dispute (except that they are two year agreements). The Union's wage proposal, which would increase wage rates by 15 per cent at the end of the contract year, are disproportionate to previous settlements not only in Watertown but in about a dozen other nearby communities.

The Employer argues that the U.S. Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers as well as the U.S. Department of Commerce's GNP Implicit Price Deflator have both declined during the early part of 1981 and were below 10 per cent for the most recently reported annual rate figures. Thus a 15 per cent increase, as proposed by the Union, is not only out of line with other municipal settlements in the area but is also not justified by the trend in the cost of living for these employees.

The Employer supports its position on adding the \$300 allowance for EMT qualified employees to the base rate by arguing that most of the employees in the unit are so qualified and that all new hires are required to obtain the certification. If the \$300 remains a separate allowance, the result would be to make the salary rates lower than they actually are. The proposed action would also raise base rates for purposes of calculating fringe benefit contributions and overtime premiums.

*These were the figures used by the Employer. Note that the arbitrator in later comments has used estimated 1978 population figures from the Wisconsin Blue Book, and these differ somewhat from the population figures on this page.

On the issue of sick leave accrual the Employer argues that for the fire fighters in the unit an addition of 48 hours on top of the liberal allowance they already have is ample. The Employer does not want to widen the present differential between the accrual limit for fire fighters (twelve hundred hours) and the limit for inspectors (eight hundred hours). All other City employees have been given an additional 48 hours of accumulated sick leave this year.

The \$5,000 Employer paid term insurance is a benefit that has been extended to other City employees. In exchange, the City is asking for a subrogation clause. The City now supplements workers compensation benefits up to the level of regular salary for a period limited to ninety days. In its final offer the Employer is proposing that any injured employee who sues a third party and recovers for injuries that have also been covered by workers compensation should reimburse the City for the amount received under the labor agreement. The Employer argues that employees are already obligated by law to repay the insurance company the amounts of the workers compensation benefits. The City should also be guaranteed the amounts it has paid according to the same principle.

The Union makes its case for wage increases of 10 per cent effective January 1, compounded by 3 per cent on July 1, compounded by 2 per cent on December 1, 1981 on the basis of comparability. It made the following 1981 comparisons of top fire fighter and Lieutenant annual rates for the cities named:

<u>City of Town</u>	<u>Population</u>	<u>Top Fire Fighter or Motor Pump Operator</u>	<u>Lieutenant or rank above MPO</u>
South Milwaukee	22,673	\$21,264*	\$22,734*
West Bend	22,442	19,411	20,379
Cudahy	21,144	20,527	21,855
Oak Creek	16,070	20,871	22,599
Menasha	15,010	18,600	19,392
Brown Deer	14,250	19,989	21,862
Two Rivers	13,148	16,890	18,533
Kaukauna	11,570	17,406	18,350
St. Francis	10,269	20,616	21,636
Town of Beloit	8,383	16,756	17,353
Watertown (Union Offer)	17,360	17,511	18,562
(City Offer)		16,998	17,968

* Plus a COLA adjustment

Except for Two Rivers and Town of Beloit the Employer's offer would put Watertown fire fighters at the bottom of this list. Even if the Union's final offer is selected, the Watertown fire fighters would then only move up one notch above Kaukauna and would still be near the bottom in this comparison.

The Union asserts that it would be unfair to a substantial portion of the members of the unit (five of the sixteen) to build the \$300 EMT allowance into the basic rate. Except for

the Beaver Dam Fire Department the Union asserts that other departments do not have the allowance built into their wage rates.

The Union also argues that the top grade for fire fighter in the Watertown Fire Department should be compared with the Motor Pump Operator classification in many other fire departments for the reason that in the absence of such a classification, any and all the fire fighters in the Watertown Fire Department must perform the work of a Motor Pump Operator.

The Union also introduced data purporting to show hourly rates and some recent wage increases for certain private sector employees in the area, including a grocery, a public utility, and some manufacturers. These rates were all higher than fire fighter rates and the 1981 increases greater than what has been offered by this Employer.

As to the sick leave issue, the Union points out that the police and DPW units had had their sick leave accumulation increased by six working days or 48 hours. The equivalent increase for fire fighters would be three working days of twenty-four hours or 72 hours. The appropriate differential has been established, since the old limit for fire fighters has been 1200 hours as compared to 800 hours for other employees who work eight hour days. In the view of the Union there would be no reasonable justification for the arbitrator's selection of only 48 hours for the increase in allowable accrual of sick leave for fire fighters.

The union argues that there is no precedence in comparable communities for the Employer proposal of subrogation that has been tied to the Employer offer of the \$5,000 life insurance. In the Union view, the wording that has been proposed by the Employer would necessitate that any award of damages beyond what had been paid to an employee by workers compensation and the supplement by the Employer would need to be assigned to the Employer. The Union sees a distinction between the ordinance introduced into evidence at the hearing and the suggested wording of the labor agreement from the Employer. In these circumstances the Union does not believe that any employee would be willing to initiate a court action to recover damages since there would be nothing remaining for him if the action turned out to be successful.

Opinion

The statute lists factors (a) through (h) to which the arbitrator is to give weight in reaching a decision. The first three criteria, (a) lawful authority of the employer, (b) stipulations of the parties, and (c) interests and welfare of the public and the financial ability of the unit of government to meet the cost, are not factors in this dispute that require any discussion. Factor (d), comparison of the conditions of these employees with those of other public and private employees, warrants some extended comment.

In a case like this there is apt to be some difficulty in establishing the proper comparable jurisdictions for the purpose of comparing the level of wages and benefits. In this connection the Employer's single comparison with Beaver Dam can almost be dismissed out of hand. Although Beaver Dam is nearby and would be useful as one of a number of comparable jurisdictions, it has limited usefulness when taken alone. But the 10 comparable jurisdictions chosen by the Union (there were no wages for the eleventh, the Town of Caledonia, because it was in arbitration) also have questionable usefulness. The rationale

for their selection was said to have been that they were communities of similar size, generally within a radius of about 75 miles (although Two Rivers appears to be 10 to 15 miles farther out), and where locals of the International Association of Fire Fighters have bargaining relationships. But a few minutes study of the Wisconsin Blue Book and a highway map indicate that thirteen other cities (and perhaps some townships as well, although they cannot be identified) meet the size and distance criteria. These are listed below with their estimated 1978 populations (from the Blue Book):

Beaver Dam	14,409
Cedarburg	10,536
Franklin	16,856
Glendale	13,722
Greendale	17,975
Mequon	16,654
Oconomowoc	10,784
Muskego	15,241
Neenah	23,571
Shorewood	14,163
Sun Prairie	13,576
Whitefish Bay	15,800
Whitewater	10,700

Beaver Dam was objected to by the Union on grounds that its union was not affiliated with the International Association of Fire Fighters. It may be that these other cities are similarly unacceptable to the Union as comparables, but if they have paid fire departments, I believe that they should have been used for purposes of comparison.

In addition, it should be noted in examining the list of comparables submitted by the Union that five of them (South Milwaukee, Cudahy, Oak Creek, Brown Deer, and St. Francis) are suburbs of Milwaukee and are undoubtedly influenced by being within a large metropolitan area. While one would not automatically exclude them from such a comparison for that reason (nor seven of the thirteen listed above, which are also Milwaukee suburbs), the labor market of which they are a part is probably dissimilar from the labor market for Watertown (or Two Rivers, Menasha, Kaukauna, or Town of Beloit).

The other questionable feature of the Union's listing goes to the fact that in all cases where there was a non-supervisory rate higher than fire fighter, that rate was used. Although the Union justifies this device on grounds that all Watertown fire fighters must perform MPO duties, I cannot accept such a comparison without knowing more about the proportion of Motor Pump Operators to fire fighters in the other jurisdictions. It would be especially difficult to assume that a Watertown fire fighter classification was in all cases equivalent to the MPO classification in view of the fact that the differential between the two classifications is as much as \$1872 per annum (in the St. Francis Fire Department).

As to the Union's private sector wage comparisons from the City of Watertown, there was no showing that any of the classifications listed had any labor market comparability relationship to the employees involved in this proceeding.

In my opinion neither party to this dispute has provided comparative wage data that can be used as a basis for an award. It is therefore necessary for me to base my decision on the other information provided.

The next factor is (e) cost of living. While this is a factor about which the U.S. government published monthly figures, the parties in this dispute are unable to agree on how they should be applied. The Union would base its proposal on what happened during the previous contract term when the index rose by 12.5 per cent during 1980. This is a reasonable position to take. If the CPI is an accurate measure of the cost of living, the real wages of these employees declined by that amount during the year the previous labor agreement was in effect. Although the Union has not specifically made the argument, the extra 2½ per cent that would go to make up the total of 15 per cent increase during 1981 could be justified on grounds that traditionally real compensation for workers should improve by a factor of 2 to 3 per cent on an annual basis.

On its part the Employer makes two points. In the first place, it feels that the GNP Implicit Price Deflator has a broader basis and is more useful in measuring the change in cost of living. For 1980 that figure was 10.2 per cent, more than 2 per cent less than the increase as measured by the CPI. But in addition, the Employer points out that the CPI has been declining steadily each month during 1981 and the Employer expects that trend to continue. So from the standpoint of the Employer it would simply be imprudent to base a wage increase on what happened in 1980.

On this issue I am inclined to agree with the Employer. While the cost of living, as measured by the CPI, may not continue the decline we have seen in the first half of 1981, it seems clear from reports of settlements in both the public and private sector that they have not been measuring up to the level of the percentage increase in the CPI during 1980. While there may be no magic in the 10 per cent figure used by the Employer, it seems closer to the level of reported settlements during 1981 than the 15 per cent proposed by the Union. (The August 3, 1981 issue of the Labor Relations Reporter states that: "Median first-year wage gains amounted to 9.8 percent, or 73 cents an hour, in all industries negotiating contracts during the past six months. . .") (107 LRR 259)

The next factor is (f) overall compensation presently received by the employees. On this criterion the rates in the fire fighter unit appear not to have declined in recent years when compared to other municipal employees of this Employer. Turnover in the unit is so small as almost to be not noticeable at all. The Employer asserts that there has been only one resignation in the past four years. While the fire fighters are understandably impatient to reduce the disparity between their wages and the wages of the police in Watertown, the differential has been somewhat reduced since 1972 and would be somewhat closer to the trend if the Employer's proposal is accepted rather than the Union's. The level of benefits, such as insurance, vacation, sick leave, etc., appears to be adequate. And perhaps most important, the settlement offered by the Employer is in line with settlements previously accepted by the other collective bargaining units of police and DPW.

The issue of building the \$300 EMT allowance into the basic rate does not appear to be important enough to affect my award. The five individuals who are not qualified will continue not to get it. I do not find any strong pattern of separate allowances for EMT in other agreements. Most of those agreements submitted by the Union at the hearing do not mention EMT at all.

I do not believe that there have been any changes during the pendency of the proceeding (factor (g)) that would change my view on any of the foregoing. Nor do I see any other factors,

(f), normally or traditionally taken into consideration, that would change my view of this dispute.

I want to make two other comments, one about the subrogation clause, and one about sick leave accrual. On the issue of subrogation the Union seems determined to misunderstand what the Employer proposes. The Employer's explanation at the hearing and in the brief is very clear. It is not intended that the City would appropriate any settlement obtained by an employee that exceeded the amount of wages lost by the employee. The subrogation clause would only anticipate recapturing the amount paid the employee in workers compensation insurance benefits and the supplement above workers compensation paid by the City to make the worker whole for wages lost. Any damages awarded to the employee that exceeded that amount could be kept by the employee.

As to the Employer's position on sick leave accrual, it appears to have no rational basis. Presumably the police and the DPW employees, like the Bureau of Fire Prevention and Inspection employees, work a 40 hour week (although there was no testimony about the length of the police work week). And presumably, like the Bureau of Fire Prevention and Inspection employees, they accumulate sick leave at the rate of 8 hours for each month of full-time service. Fire fighters accumulate sick leave at the rate of twenty-four hours for each calendar month of full-time service. The limit of accrued sick leave in the old agreement was 800 hours for the employees in the Bureau of Fire Prevention and Inspection and 1200 hours for fire fighters. If the accrual for the former group is to be increased by 48 hours, a simple ratio applied to the fire fighters would yield 72 hours. While this is a minor issue compared to the wage issue and cannot affect the outcome, I view the Employer's position as unfair and inequitable for the fire fighters.

AWARD

The final offer of the Employer is adopted as the award in this proceeding.

Dated: August 17, 1981
at Madison, Wisconsin

Signed: David B. Johnson
David B. Johnson
Neutral Arbitrator

"Appendix A"

FINAL OFFER OF THE CITY OF WATERTOWN
TO LOCAL 877 OF THE INTERNATIONAL
ASSOCIATION OF FIRE FIGHTERS AFL-CIO

- 1) Increase all wage levels specified in Appendix "A" of the current agreement by 10% effective 1/1/81.
- 2) Increase all wage levels specified in Appendix "A" of the current agreement by \$300. Delete the last paragraph on Appendix "A" and substitute therefor the following language:

Employees who do not hold certification as emergency technicians shall receive \$300 less annually than the amounts specified in Appendix "A".

- 3) ARTICLE VIII

Section 8.01(a) Increase the maximum accumulation of sick leave to 1248 hours.

Section 8.01(b) Increase the maximum accumulation of sick leave to 106 days.

- 4) Create new Section 13.04 in Article XIII to read as follows:

13.04 - Effective May 1, 1981 and thereafter, the City agrees to provide each employee with \$5000.00 worth of term life insurance from a carrier of the City's choice. The City shall make available to the employee the option of an additional \$5000.00 worth of life insurance coverage to be purchased by the employee at his or her expense.

The offering of the above language is contingent upon the Union's agreement to the following language change.

New Section 9.02 - Subrogation

Any employee receiving or who has received the difference between his worker compensation benefits and his regular salary pursuant to Section 9.01 who recovers damages against a third party arising out of the compensable injury shall reimburse the City to the extent said damages equal or exceed the payments under Section 9.01.

All other agreed upon items as follows:

- 1) Article XIII Health Insurance - Insert the dollar amounts \$89.01 and \$32.81 which represent full payment by the City of health insurance.
- 2) The City agrees to provide four originals and twenty copies of the agreement to the Union without charge.
- 3) Duration of the agreement will be from January 1, 1981 to December 31, 1981.
- 4) Funeral Leave - The City will grant a leave of absence with pay for an absence on scheduled workdays to attend and/or make arrangements for a funeral of the following duration:

For fire fighting employees:

Up to 48 hours in the event of the death of a parent, child or spouse. Up to 24 hours in the event of the death of a brother, sister, mother-in-law or father-in-law.

For employees on eight hour shifts:

Up to three days in the event of the death of a parent, child, or spouse. Up to one day in the event of the death of a brother, sister, mother-in-law or father-in-law.

- 5) All wage increases are retroactive to January 1, 1981 without interest thereon.
- 6) All other language remains the same. Additionally the following items are agreed upon outside the contract and are not to be referenced therein.
 - a) The City agrees to post, prior to any promotional exam, a summary of the procedure to be followed in that exam.
 - b) The City agrees to make its Safety Program available to employees in the Fire Department which provides in part for the provision of prescription safety glasses at City expense in a style chosen by the City. Further that the glasses will be replaced if they are broken in the line of duty.

LINDNER, HONZIK, MARSACK,
HAYMAN & WALSH, S.C.

By: 

James R. Scott

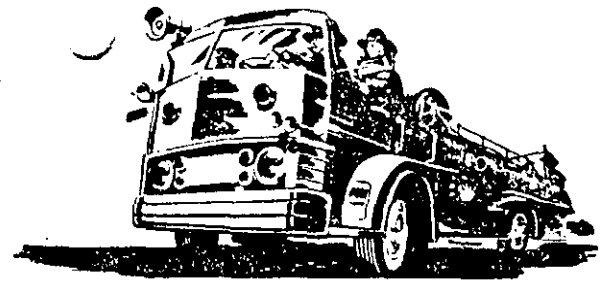
Attorneys for City of Watertown

"APPENDIX B"

WATERTOWN FIRE FIGHTERS

Local #877

AFFILIATED WITH I.A.F.F.



Richard A Gallup _____
PRESIDENT

202 W Green St _____
ADDRESS

Watertown, W1 53094 _____
CITY STATE

home phone 414-261-9310
work phone 414-261-3610

SECRETARY

ADDRESS

CITY STATE

February 25, 1981

Mr David Shaw
WERC
Suite 200
14 W Mifflin St
Madison, W1 53703

Dear Mr Shaw:

The following is Watertown Fire Fighters Local 877 final offer for the 1981 contract with the City of Watertown:

We agree to the items that were listed as agreed to at the meeting on Feb 24, 1981 (funeral leave, health insurance, promotional procedure, copies of contract, retroactivity, duration, and safety glasses).

Final Offer

1. Change Appendix "A" to reflect an across the board increase of 10% effective January 1, 1981, compounded by 3% on July 1, 1981, compounded by 2% on December 1, 1981.

The salary schedule listed in Appendix "A" would read as follows:

Classification	1/1/81	7/1/81	12/1/81
Fire Lieutenant	\$17,668	\$18,198	\$18,562
Fire Inspector-Start	\$14,116	\$14,539	\$14,830
-after 1 year	\$15,401	\$15,863	\$16,180
-after 2 years	\$16,034	\$16,515	\$16,845
-after 3 years	\$16,668	\$17,168	\$17,511
-after 4 years	\$17,344	\$17,864	\$18,221
Firefighter Mechanic applicable MF rate plus additional annualized payment of	\$677	\$697	\$711
Firefighter-Start	\$14,116	\$14,539	\$14,830
-after 1 year	\$15,401	\$15,863	\$16,180
-after 2 years	\$16,034	\$16,515	\$16,845
-after 3 years	\$16,668	\$17,168	\$17,511



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Local 877 Final Offer (Cont)

2. Increase sick leave accumulation from 1,200 hours to 1,272 hours for employees on a 56 hour work week and from 100 days to 106 days for employees on a 40 hour work week.

Change 8.01 to read:

8.01 - a) Firefighting employees who have been continuously employed by the Employer for a period of at least six(6) months shall be entitled to sick leave with pay on the basis of twelve (12) hours for each calendar month of full-time service. Effective January 1, 1977, such employees shall be entitled to sick leave with pay on the basis of twenty-four (24) hours for each calendar month of full time service. Although such new employees are unable to use sick leave during their first six (6) months, they will accrue sick leave ~~daily/they~~ on the above basis during such period. Unused sick leave may be accumulated to a total of not more than 1,272 hours. (Present firefighting employees whose accumulated sick leave exceeds 1,272 hours as of January 1, 1975 shall not lose such excess accumulation, but they shall not be allowed to accumulate sick leave until their accumulated sick leave falls below the maximum amount stated above.)

b) Employees in the Bureau of Fire Prevention and Inspection who have been continuously employed by the Employer for a period of at least six (6) months shall be entitled to sick leave with pay on the basis of one workday (8 hours) for each calendar month of full-time service. Although such new employees are unable to use sick leave during their first six (6) months, they will accrue sick leave on the above basis during such period. Unused sick leave may be accumulated to a total of not more than 106 workdays.

3. Life Insurance- The City to furnish and pay the premiums for \$5,000 of term life insurance effective 5/1/81, with the Employee given the option of purchasing an additional \$5,000 coverage at his own expense. The City to elect the insurance carrier.
4. All other language in the 1980 contract to remain the same as in the 1980 contract, with the exceptions of: a) the items listed above b) the items listed as agreed to on February 24, 1981 where there will be new wording for funeral leave and the new rates listed for health insurance and in 21.01 where the effective date shall be January 1, 1981 effective to and including December 31, 1981.

Please forward any correspondence to me with a copy to Leroy Waite, 1600 East Ridge Rd, Beloit, WI 53511.



Richard Gallup
Pres, Local 877

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