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RELATIONS COMMISSION

ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between CITY OF CUDAHY And CUDAHY FIRE FIGHTERS ASSOCIATION	Interest Arbitration Case XL No. 28865 MIA-608 Decision No. 19375-A

Impartial Arbitrator

William W. Petrie
1214 Kirkwood Drive
Waterford, WI 53185

Hearings Held

May 12, 1982
August 10, 1982
Cudahy, Wisconsin

Appearances

For the Employer

MULCAHY & WHERRY, S.C.
By Robert W. Mulcahy, Esq.
815 East Mason Street
Suite 1600
Milwaukee, WI 53202-4080

For the Union

LAWTON & CATES
By Richard V. Graylow, Esq.
Tenney Building
110 East Main Street
Madison, WI 53703-3354

BACKGROUND OF THE CASE

This is a statutory interest arbitration between the City of Cudahy and the Cudahy Fire Fighters Association. The parties' prior labor agreement expired at the end of calendar year 1981, and the terms of a two year renewal agreement are the subject matter of these proceedings. During the course of contract renewal negotiations, the parties were able to reach agreement on all matters except the following:

(1) The amount of an initial wage increase to be effective January 1, 1982, and the amounts and the timing of certain deferred wage increases to be implemented during the life of the renewal agreement.

(2) The amount of the medical insurance premiums to be paid by the Employer for 1983, in the event that experience rating by the insurer results in a premium increase for calendar year 1983.

(3) The number of days of paid vacation allowance per year for members of the bargaining unit.

The Negotiations Impasse

Preliminary negotiations during 1981 failed to result in agreement between the parties, after which the City on November 18, 1981, filed a petition with the Wisconsin Employment Relations Commission, requesting final and binding arbitration of the matter pursuant to Section 111.77 of the Municipal Employment Relations Act. A representative of the Commission met with the parties on January 19, 1982, and was unsuccessful in achieving a mediated settlement; in an Advice to the Commission dated February 4, 1982, the existence of an impasse was certified, and the issuance of an order directing arbitration was recommended to the Commission. On February 5, 1982, findings of fact, conclusions of law, certification of the results of investigation, and an order requiring arbitration was issued by the Commission. On February 19, 1982 the Commission issued an order appointing the undersigned to hear and decide the matter.

Pursuant to the prior agreement of the parties, the undersigned met with the parties on May 12, 1982, in an unsuccessful attempt to mediate a negotiated settlement of the dispute.

On August 10, 1982, an arbitration hearing was held in Cudahy, Wisconsin, at which time both parties received a full opportunity to present evidence and argument in support of their respective positions. Both parties closed with submission of hearing and post-hearing briefs, after which the hearing was initially closed by the Arbitrator on September 30, 1982.

In reliance upon Section 111.77(6)(g) of the Act, the Employer submitted certain additional information to the Arbitrator on October 23, 1982, and again on November 12, 1982; the information consisted of summary data relating to either negotiated settlements or to interest arbitration awards in purportedly comparable public and private sector settlements. In subsequent letters to the Arbitrator, the Association confirmed that it had not agreed to any post-hearing submission of information, argued that any such unilateral submissions were improper, and requested that the submissions be disregarded by the Arbitrator.

Relying upon Section 111.77(6)(g) of the Wisconsin Statutes, the Arbitrator notified the parties by letters dated November 22 and December 10, 1982, that appropriate additional evidence could be introduced, but only if the record were reopened to allow the submission of such evidence by both parties. It was suggested to the parties by the Arbitrator, that the hearing could be reopened to accomodate the request of either party to submit such additional evidence or, preferably, the additional material could be introduced into the record by stipulation of the parties. Thereafter, additional evidence and argument were submitted into the record by agreement of the parties, with the Union preserving its objection to any reopening of the record. The arbitrator was finally notified on January 14, 1983, that the parties had agreed that no further additional evidence or argument would be forthcoming.

The Statutory Framework for the Proceeding

The dispute is governed by the provisions of Section 111.77 of the Wisconsin Statutes which provide in pertinent part as follows:

"111.77 Settlement of disputes in collective bargaining units composed of law enforcement personnel and fire fighters.....

* * * * * *

(4) There shall be 2 alternative forms of arbitration:

(a) Form 1. The arbitrator shall have the power to determine all issues in dispute involving wages, hours and conditions of employment.

(b) Form 2. The commission shall appoint an investigator to determine the nature of the impasse. The commission's investigator shall advise the commission in writing, transmitting copies of such advice to the parties of each issue which is known to be in dispute. Such advice shall also set forth the final offer of each party as it is known to the investigator at the time that the investigation is closed. Neither party may amend its final offer thereafter, except with the written agreement of the other party. The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

(5) The proceedings shall be pursuant to Form 2 unless the parties shall agree prior to the hearing that Form 1 shall control.

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

(a) The lawful authority of the employer.
(b) The 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."

ISSUES

In light of the fact that there was no agreement of the parties to the contrary, these proceedings are governed by Form 2 as described in Section 111.77.(4)(b) above. Accordingly, the authority of the Arbitrator is limited to the selection of the final offer of either of the parties, and the issuance of an award incorporating that offer without modification. In determining which of the final offers to select, the Arbitrator is governed by the statutory criteria referenced above.

THE FINAL OFFER OF THE CITY

The City's final offer on the various impasse items consisted of the following.

(1) That the salary schedule be modified to provide for the following increases.

(a) A nine percent across-the-board increase effective January 1, 1982.
(b) An eight and one-half percent across-the-board increase effective January 1, 1983.

(2) That the medical and hospitalization insurance coverage be modified to provide that the Employer will pay the full cost of single and family plan coverage for calendar year 1982, with renegotiation by the parties if health insurance premiums are increased by the insurer for the 1983 calendar year.

(3) That the paid vacation provisions of the renewal agreement remain unchanged from the prior agreement.

(4) That the remainder of the prior agreement remain unchanged in the renewal agreement.

THE FINAL OFFER OF THE ASSOCIATION

The Association's final offer on the various impasse items consisted of the following.

(1) That the paid vacation provisions of the new labor agreement provide for the following annual allowances.

(a) Six days of paid vacation after one year of service.
(b) Nine days of paid vacation after eight years of service.
(c) Twelve days of paid vacation after fifteen years of service.
(d) Fifteen days of paid vacation after twenty-two years of service.

(2) That the salary schedule be modified to provide for the following increases.

(a) A six percent across-the-board increase in salary effective January 1, 1982.
(b) A six percent across-the-board increase in salary effective July 1, 1982.
(c) A six percent across-the-board increase in salary effective January 1, 1983.
(d) A two percent across-the-board increase in salary effective July 1, 1983.

(3) That the prior medical and hospitalization insurance coverage remain unchanged, including the Employer's obligation to pay the full cost of single and family plan hospital and surgical insurance for all eligible employees.

(4) That the remainder of the prior agreement remain unchanged in the renewal agreement.

POSITION OF THE CITY

In support of its contention that the final offer of the City is the more appropriate of the two before the Arbitrator, the City preliminarily emphasized the following arguments:

(1) It submitted that the parties were in agreement with respect to the comparability of the City of Cudahy, to the communities of West Milwaukee, Greendale, Greenfield, Oak Creek and South Milwaukee. It additionally submitted various data and arguments in support of the contention that the City of Saint Francis should also be considered a comparable community.

(2) It submitted that consideration by the Arbitrator of the interest and welfare of the public criterion, favored the final offer of the Employer. In this respect it cited dictum from a recent interest arbitration decision by another arbitrator in a school district arbitration in Wisconsin. In connection with the criterion, it also alleged and cited erosion of the City's tax base, reduction of employment rolls within the City, population losses in the City during the decade of the 1970s, and the impact of the burden of property taxation being shifted from manufacturing to residential property

taxation; it also emphasized recent increases in layoffs, reduced work weeks, and depressed economic conditions in the City, in support of the conclusion that the final offer of the Association was "more than the traffic could bear" in the community.

In connection with the final wage offers of the parties, and various criteria referenced in the Wisconsin Statutes, the Employer emphasized the following arguments.

(1) That the total "lift" supplied by the four salary increases provided for under the Association's final offer was extremely high, was not supported by comparables, and could not be justified on the basis of any purported "catch up" need.

(2) That consideration by the Arbitrator of the overall level of compensation criterion favored the final offer of the Employer.

(a) That when the combined costs of wages and health insurance were considered, that the Employer's offer was quite competitive.
(b) That present longevity benefits for those in the bargaining unit, were equaled by three comparable communities, and were higher than those offered in three other such communities.
(c) That present uniform allowances for those in the bargaining unit were well above the average paid in comparable communities.
(d) That the City of Cudahy was one of five communities paying the full cost of life insurance premiums.
(e) That the City pays the full 8% contribution of the fire fighters to the Wisconsin Retirement Fund, and has agreed to pay up to a 9% figure if the State requires such an increase. That no comparable city has a higher retirement benefit.
(f) That the current sick leave benefits are superior to those offered by all but one comparable community.

(3) That consideration by the Arbitrator of the cost of living criterion favored the adoption of the final offer of the City. Specifically, that consideration of movement in the Consumer Price Index or the Personal Consumption Expenditure Deflator, showed that the Employer's final offer was justified, that the Association's average wage offer was higher than necessary to keep pace with cost of living increases, and that the total lift of its final proposal was in excess of what would be justified by cost of living considerations.

(4) That the private sector settlements on both a national and a local level reflect the current recession and the current reduction in the rate of increase in cost of living; further, that the 12% 1982 increase in wages proposed by the Union is far in excess of any other public sector settlements in the Milwaukee Metropolitan area. Even if the "catch up" argument were valid, that the critical economic situation is not conducive to acceptance of the Union's offer, and, in any event, that the City's 8.5% increase for 1983 will probably be above the average for comparable communities.

(5) That arguments relating to police-fire parity in the City of Cudahy cannot justify the adoption of the Association's final offer; that past attempts to maintain parity between the two units have been eroded by the past vagaries of the interest arbitration process, and that there has been no such parity at any time during the past eight years. That parity arguments are simply unsupported by the bargaining history, which has evolved out of both bilateral agreements and interest arbitration proceedings, and unsupported by the fact that Cudahy Fire Fighters have fringe benefits superior to their Police Officer counterparts.

(6) That there is no basis for concluding that increased productivity on the part of those in the bargaining unit supports the adoption of the final offer of the Association.

In support of its proposal that the City pay 100% of the cost of health insurance premiums in 1982, and that any increases in 1983 premiums be bargained upon by the parties, the City offered the following primary arguments.

(1) That the proposal is justified by the dire economic circumstances facing both the City and the tax payers at the current time.

(2) That the creation of a common school district has caused the City to borrow 1.9 million dollars in short term loans to cover cash flow problems; that in 1983, the City will lose an additional $500,000 in interest which previously was available from the investment of school funds.

(3) That the reopener proposal will allow Association access to the statutory interest arbitration process in 1983, if the parties are unable to reach agreement on the matter of health insurance premium contributions by the City.

(4) That the City currently pays the highest health insurance premiums of any comparable community, and that the gap increased in 1982. Further, that claims exceeded premiums by $77,000 in 1981, putting the City in a current deficit position of over $177,000, that the work force has been aging, and claims experience has prevented the Employer from duplicating current benefits at a lower cost.

(5) That employee participation in health care costs is an efficacious method of reducing increases in health insurance premiums, by encouraging more prudent use of health care services.

(6) That the Employer is merely seeking an opportunity to negotiate relative to anticipated 1983 increases in health care premiums. That such an effort should be distinguished from efforts to negotiate a fixed cap on such future payments.

That the Association's proposed vacation benefit increase is not justified by the evidence in the record, most particularly on the basis of the argument that the current firefighter vacation schedule is superior to that of any other group of City employees.

(1) That Firefighters currently have the highest ratio of vacation time-off to hours worked: an 8.5% for fire fighters, versus an approximate 6.6% ratio for other City employees.

(2) That, due to their 56 hour schedule, Firefighters receive considerably more consecutive days off under their current vacation plan than do other City employees; that the ten paid holidays, and their work schedule trading ability, give firefighters great flexibility with respect to their working hours.

(3) That the Union has presented no information relative to the working schedules for other comparable fire departments, making it impossible to accurately evaluate the true relative values of their vacation schedules. Accordingly, that the Union has not met its burden of proof with respect to the request for improved vacation benefits.

By way of concluding arguments, the City emphasized the significance of the current economic recession in the City of Cudahy and in the Country as a whole. It submitted that recent and continued changes in economic conditions must be considered by the Arbitrator under Section 111.77(6)(g) of the Wisconsin Statutes, and submitted also that the City's final offer significantly exceeds all measures of cost of living and/or inflation. Apart from economic conditions, the Employer re-emphasized the total overall compensation and benefits currently received by the firefighters, comparisons with other public and private sector employees, and the public interest of the taxpayers. It concluded by re-emphasizing the negotiations aspect of its demand relative to 1983 health insurance premiums.

POSITION OF THE ASSOCIATION

In support of its contention that its final offer is the more appropriate of the two before the Arbitrator, the Association emphasized the following principal arguments.

(1) For various stated reasons, it submitted that the comparison criterion is the most important of the impasse criteria referenced in the Wisconsin Statutes. In this connection it particularly emphasized firefighter comparisons with the communities of West Milwaukee, Oak Creek, South Milwaukee, Greenfield and Greendale.

(2) In connection with the health insurance premiums impasse, it emphasized the following considerations.

(a) That movement away from the payment of 100% of the health insurance premiums by the Employer would put those in the bargaining unit on a different footing than supervisory personnel within the department, and all other City of Cudahy employees.

(b) It submitted that the Employer's final proposal relative to medical insurance premiums, constituted a take-away or a modification of a benefit previously adopted in negotiations between the parties. It argued that interest neutrals are and should be extremely reluctant to modify past practices, emphasizing that at no time in the past have those in the bargaining unit been required to pay any part of hospital and medical insurance premiums.

(c) It argued that the Employer's proposal was probably illegal under the rationale applied by the Wisconsin Supreme Court in Milwaukee Deputy Sheriffs Assoc v. Milwaukee County, 64 Wis 2d 651, 88 LRRM 2169. In this connection, it submitted that the Employer's offer was not finite and definite, and would not settle the controversy without further negotiations and litigation.

(d) It argued that the Employer's insurance premium offer was not based on comparisons, was inconsistent with its professed posture relative to fairness and equity, was inconsistent with intra-city comparisons, and was contrary to the City's past position with respect to standardization of fringe benefits within the City.

(e) It urged consideration by the Arbitrator of the Union's flexibility in relationship to increasing costs for health insurance; in this respect, it cited the Union's agreement to changes in carriers, to the use of self-funding by the Employer, and to changes in premium pick-up for retirees.

(f) It referenced certain decisions of the Arbitrator in prior interest disputes in Wisconsin.

(3) In connection with the wage increase impasse, it emphasized the following principal arguments.

(a) That implementation of the City's final offer would result in Cudahy Firefighters ranking sixth among six comparable communities; that the Union's offer would result in a modest increase to either fourth or fifth among the six comparable communities.

(b) That the City's offer of a 9% wage increase is very close in 1982 dollar costs to the Union's two step 12% increase.

(c) That the 12% increase proposed by the Union is reasonable, in light of the 11% increase granted to Cudahy Patrolmen in 1982.

(d) That the Union's offer more closely reflects Milwaukee area increases in cost of living.

(e) That voluntary additional work performed by members of the bargaining unit, such as painting the fire station, should be considered by the Arbitrator.

(4) In connection with the vacation allowance impasse, the Union presented the following principal arguments.

(a) That the Union's offer would bring the Firefighters into line with all other City employees, including those in supervisory positions within the Department.

(b) That the Union's offer would result in moving up one step among comparable communities.

(5) It emphasized and argued various inter-city comparisons as generally favoring the adoption by the Arbitrator of the final offer of the Union.

(a) It cited comparisons between the wages paid to Firefighters in the Cities of South Milwaukee, Greenfield, Oak Creek, West Milwaukee and Greendale;

it argued that adoption of the City's final offer would drop the Cudahy Firefighters from third to last among these comparable cities, between 1977 and 1982.

(b) It submitted that the above comparisons would show average bi-weekly earnings declining from $3.36 above average in 1977 to $40.84 below average for 1982 if the employer's final offer is adopted.

(c) It argued that similar comparisons for those classified as MPOs show the same comparitive declines referenced above.

(d) It urged a return to previous inter-city rankings between the City of Cudahy and the referenced cities.

(6) It argued that intra-city comparisons also favored the adoption by the Arbitrator of the final offer of the Union.

(a) It cited a 9% - 2% split increase for 1982 for DPW employees, and an 8% - 3% split increase for 1982 for the Cudahy Police unit.

(b) It referenced a bi-weekly difference in earnings between Patrolmen and Firefighters of $.95, which would be increased to $27.50 under the City's final offer; it also cited annual earnings figures for the two groups.

(c) It argued that the adoption of the Union's final offer would result in a 21% wage increase for firefighters during 1981 and 1982, a figure identical to that received by Patrolmen; it submitted that adoption of the City's offer would result in only an 18% increase over the two year period.

(7) It submitted that consideration by the Arbitrator of cost of living considerations, favored the adoption of the Union's final offer.

(a) It cited movement in the Milwaukee area Consumer Price Index between 1977 through 1981, arguing that the prices had increased significantly faster than wage increases during this time period.

(b) It argued that adoption of the Employer's final offer would result in further erosion of earnings of Firefighters, relative to increases in cost of living.

(c) Since last going to the bargaining table in 1980, it argued that negotiated wage increases of 9½% for 1980 and 9% for 1981, were insufficient to match cost of living increases totalling 26.3% for the two years

employees, all DPW employees, the Fire Chief, the Assistant Chief, and all Cudahy City Officials receive more vacation.

On an overall basis, the Union emphasized both inter-city and intra-city comparisons, and charged the City with the failure to follow past promises relative to maintenance of wages. It additionally cited the favorable earnings and compensation position of the members of the Common Council relative to the practices of those cities used for intra-city comparison purposes.

In its reply brief, the Union emphasized the following principal arguments:

(1) That the various private sector comparisons referenced in the Employer's brief should not be credited by the Arbitrator. That the Employer itself had rejected such comparisons for various reasons in the past, and that various arbitrators, including the undersigned, had rejected or minimized the persuasive value of such comparisons.

(2) It referenced and questioned the persuasive value of certain arbitration decisions referenced in the Employer's brief.

(3) It argued against any use of the City of St. Francis for comparison purposes, citing the exclusion of St. Francis Firefighters from consideration during prior arbitrations.

(4) It submitted that the need for catch up was implicit in at least one of the Employer's post-hearing arguments.

(5) It argued the persuasive value of comparisons with Firefighters in the comparable cities, as opposed to other miscellaneous comparisons.

(6) It emphasized the lack of any inability to pay issue in this case, argued that the Union's final offer was reasonable in light of other City of Cudahy settlements, and submitted that the offers of the parties were only $26.53 apart in costs for the first year.

THE REOPENING OF THE RECORD

As referenced above, the record was reopened by the Arbitrator, and the following additional evidence and arguments were received.

(1) The Employer supplemented the record by adding Employer Exhibits #69 through #79. The exhibits consisted of various newspaper articles, contract settlement data, and copies of two interest arbitration awards from October and November, 1982. One of the awards was the result of a Cudahy Public Schools mediation-arbitration, while the second involved mediation-arbitration in a vocational, technical and adult education teachers unit in another city.

(2) The Union supplemented the record by its submission of Union Exhibits #103 through #121. The exhibits consisted

of various newspaper articles and additional explanatory information, primarily related to City of Cudahy Policemen and Teachers, and to Oak Creek and South Milwaukee Firefighters.

FINDINGS AND CONCLUSIONS

Preliminarily, the Impartial Arbitrator will observe that there is a substantial record in this proceeding, upon which a decision and an award by the Arbitrator will be based. With the proceedings having taken place over a rather extended period of time, with initial provisions for both briefs and reply briefs, and with the above referenced reopening of the proceedings to accomodate additional evidence and argument, it is quite apparent that both parties have put forth comprehensive evidence and persuasive arguments in support of their respective final offers.

Preliminary Consideration of the Arbitral Criteria

Both parties extensively addressed the comparison criterion and, while the Legislature did not priortize the statutory criteria, it is quite generally accepted by scholars, advocates and arbitrators that this criterion is the most persuasive. The following excerpt from the book by Irving Bernstein, also referenced in the Union's brief, briefly describes the basis for the emphasis placed upon comparisons: 1./

> "Comparisons are preeminent in wage determination because all parties derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood.....The Employer is drawn to them because they assure him that competitors will not gain a wage-cost advantage and that he will be able to recruit in the local labor market.....Arbitrators benefit no less from comparisons. They have 'the appearance of precedent and...awards based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public.'"

During the course of the hearing, the parties introduced into the record certain information and arguments relating to comparisons with other firefighters in certain other cities, and they also argued relative to other City of Cudahy employees. The relative importance of the comparisons with other comparable cities is rather clearly described in the following additional observations by Bernstein: 2./

> "a. Intraindustry comparisons. The intraindustry comparison is more commonly cited than any other form of comparison, or, for that matter, any other criterion. More important, the weight it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determination standards."

The Arbitrator will merely observe at this point that the persuasive value of intraindustry data is significantly enhanced, when the parties themselves have a bargaining history of closely following wage and benefit settlements within a specific intra-industry group.

Both parties addressed the interests and welfare of the public criterion, and after some preliminary discussion, they stipulated that there was no ability to pay question present in these proceedings. The importance of the public interest cannot be overstressed, particularly during these distressed economic times, with the attendant fiscal problems of local units of government. Indeed, in cases of established inability to pay, this factor may take precedence over all other criteria.

The cost of living factor will normally vary in importance and persuasiveness, depending upon the rate of inflation in the Nation and in the locality. In recent years, rapid increases in consumer prices have resulted in major attention being addressed to this factor in interest disputes; with the recent slowdown in the rate of inflation, it is reasonable to conclude that this factor is of less current importance than has been the case in the immediate past.

The overall level of compensation and benefits criterion was addressed by the parties, and is a factor that must be considered carefully by interest arbitrators. The Employer's relative costs of medical and hospitalization benefits was particularly addressed by both parties, as were stability of employment considerations during these difficult economic times.

The changed circumstances criterion, as a basis for the reopening of the record has already been discussed above.

From an organizational standpoint, the Arbitrator will separately address each of the impasse items, and certain general considerations, prior to selecting the most appropriate final offer.

The Final Offers of the Parties Relative to Wages

Initially, it should be made clear that the parties are apart on the amount of wage increase lift during the term of the agreement, and the dollar impact of any such wage increase. Apart from compounding considerations, the Union is asking for four increases totaling twenty percent, while the Employer is offering two wage increases totaling seventeen and one-half percent. When the impacting of the increases is taken into consideration, it is apparent that the dollar costs of the two final offers are quite close. The Union's proposed first year, split increases of 6% in January and 6% in July approximates the cost of the Employer proposed 9% increase for the full year. During the second year the Union's second year split increases of 6% in January and 2% in July approximates the dollar cost of the Employer's proposed 8.5% increase in January. While the parties are approximately 2.5% apart on the extent of the lift, therefore, they are much closer together on the actual dollar impact of the settlement, over the two year period of the agreement.

In addressing attention to the very important intra-industry comparisons criterion, it must be noted that the parties were in full agreement with respect to the comparability of Cudahy Firefighters with the cities of Greendale, Greenfield, Oak Creek, South Milwaukee and West Milwaukee. The City of St. Francis has been regarded as less persuasive in past arbitrations and, while it should not be wholly disregarded, the Undersigned also feels that it should be regarded as less persuasive than those cities referenced above.

Intraindustry comparisons are much more persuasive to arbitrators than normal, when the parties themselves have selected them, and when they have historically been utilized in past collective bargaining. The historic pattern of bi-weekly wages paid to the MPO or the Firefighter at the top of the salary schedule is addressed in Union Exhibits #26 through #31, and an examination of these exhibits demonstrates rather conclusively, the parties' mutual reliance upon settlement data from these cities, in setting Cudahy Firefighters' past wages. Rounding to the nearest dollar, and disregarding incomplete data from 1977, the following comparisons and rankings result.

	'74	'75	'76	'78	'79	'80	'81	'82
5 Cities average	$457	$507	$546	$625	$677	$751	$826	$901
Cudahy Wage	$464	$510	$548	$619	$661	$724	$790	
Cudahy vs. Avg.	(+$7)	(+$3)	(+$2)	(-$6)	(-$16)	(-$27)	(-$36)	
Cudahy Rank	2/6	4/6	4/6	4/6	4/6	4/6	6/6	

An examination of the above summarized data shows that Cudahy Firefighters have typically ranked fourth among the six comparable cities, and that their top bi-weekly wages have been relatively close to the average paid in the comparable cities. During 1980 and 1981, the average disparity in bi-weekly wages climbed to $27.00 and to $36.00 below average, and in 1981 Cudahy dropped to sixth in the rankings among the comparable cities. If the Employer's final wage offer were implemented, the Cudahy Firefighters would fall to a figure approximately $40.00 below average in bi-weekly wages and would rank last among the five cities for which 1982 wage data are available. If the final wage offer of the Union were selected, those in the bargaining unit would move to an average bi-weekly salary approximately $14.00 below average, and would probably return them to their historic ranking among the six cities.

No persuasive basis has been shown for the abandonment of the historic collective bargaining relationship between the wages paid in Cudahy versus those in the intraindustry comparison group summarized above. On the basis of this comparison data, the Impartial Arbitrator must conclude that application of the intra-industry comparison criterion clearly favors the adoption of the final offer of the Union rather than the Employer.

What then of wage comparisons with other labor agreements within the City of Cudahy itself? Even in the face of intraindustry data, internal comparisons and internal equities may be quite important.

The records show that the 1982 wage increase for Cudahy Police consisted of an initial 8% increase, followed by a second 3% increase, while the Department of Public Works unit received an initial 9% increase followed by an additional 2% increase. Disregarding considerations of compounding, both units received a 1982 lift of 11% in wages, with the police unit receiving an approzimate 9.5% increase in dollar income, and the D.P.W. unit gaining an approximate 10% increase in dollar income.

In looking to the Police and the D.P.W. settlements, their 1982 11% lift in wages is closer to the 12% increased proposed by the Union, than to the 9% increase proposed by the City; it also appears that both units would receive actual 1982 dollar increases in income above that entailed in either the City's or the Union's final offer. For these reasons, the application of the internal comparison criterion also clearly favors the adoption of the Union's rather than the City's final offer.

What next of the City's observation that the proposed second year increase would undoubtedly improve the relative wage standing of those in the unit, versus those going to the table in 1983? In the same connection, it cited the 1983 settlements in comparable cities, certain private sector considerations, and a recent interest arbitration award in a matter involving Cudahy Public Schools.

While it is difficult to foresee exactly what will transpire during the balance of 1983, the City is undoubtedly correct that 1983 settlements in both the public and the private sectors will be somewhat smaller than in recent years. Additionally, interest arbitrators must be keenly aware of the financial difficulties facing local units of government. It must be recognized, however, that the Arbitrator is limited to a consideration of the record before him, and is limited to the selection of the final offer of either party without modification. Both parties to this proceeding elected to propose a two year labor agreement, with a substantial deferred wage increase or wage increases for 1983. In the event that the adoption of the final wage offer of either party creates certain inequities with respect to 1983 wages, this is something that the parties should properly address in their future neogtiations. Ideally, the negotiations should have been concluded over one year ago, in which case the parties would have had no knowledge of 1983 settlements. The proceedings have been significantly delayed already, for a variety of reasons, and it would be highly inappropriate to further penalize either of the parties by significantly applying information available in February, 1983, to the merits of a final offer made over one year ago. While the information is properly before the Arbitrator, it simply cannot properly be considered a major determining factor in the selection of the most appropriate final offer.

Both parties addressed cost of living considerations in support of their final wage offers. The Union cited increases in the Consumer Price Index for the Milwaukee area going back to 1973, and argued that Firefighter settlements since that time, and since 1980 had failed to keep pace with inflation; it argued that adoption of the Union's final offer was justified by historic cost of living considerations. The Union also cited an 11.4% increase in consumer prices which occurred during calendar year 1981.

The Employer cited recent reductions in the rate of inflation, argued that the Consumer Price Index had overstated the actual rate of increase in cost of living experienced by those in the unit, and submitted that the adoption of the final offer of either of the two parties would adequately meet cost of living considerations.

Without unduly prolonging the discussion, the Impartial Arbitrator has preliminarily concluded that cost of living considerations do not persuasively favor the adoption of the final offer of either of the parties. Measuring the impact of cost of living increases is a rather inexact science, and there is rather general agreement that the Consumer Price Index overstates the actual impact of price increases upon individual consumers. Additionally, the historic data on past movement in the consumer price index prior to 1980 is not appropriately before the arbitrator for consideration, as prior negotiations are conclusively presumed to have disposed of this factor. This factor, and the rationale behind its adoption by interest arbitrators is well described in

the following excerpt from Bernstein's book: 3./

> "Base period manipulation.....presents grave hazards. Arbitrators have guarded themselves against these risks by working out a quite generally accepted rule: the base for computing cost-of-living adjustments shall be the effective date of the last contract (that is, the expiration date of the second last agreement). The justification here is identical with that taken by arbitrators in the case of a reopening clause, namely, the presumption that the most recent negotiations disposed of all the factors of wage determination. 'To go behind such a date,' a transit board has noted, 'would of necessity require a re-litigation of every preceding arbitration between the parties and a re-examination of every preceding bargaining concluded by them.' This assumption appears to be made even in the absence of evidence that the parties explicitly disposed of cost of living in their negotiations. Where the legislative history demonstrates that this issue was considered, the holding becomes so much the stronger."

The record in the case at hand, clearly indicates that the parties have specifically addressed cost of living considerations in past negotiations and in past interest arbitration proceedings, and, accordingly, it is clear that these data are no longer material and relevant to 1982-1983 wage considerations.

On the basis of all the above, the Impartial Arbitrator has determined that neither the early nor the post-1980 cost of living considerations definitively favor the adoption of the final wage increase offers of either of the parties.

What then of the City's arguments relating to the depressed economic conditions, the high unemployment rates within the City, population losses during the 1970s, and the shifting of the tax burden from manufacturing to residential property taxation?

While there was no allegation of inability to pay, within the meaning of the statutes, the Employer persuasively presented its arguments relative to difficulty of payment. The arguments relative to the economic climate apply, however, to the substantial majority of Wisconsin communities, including those in the comparison group referenced earlier. There has been no persuasive case made relative to why the Cudahy Firefighters should suffer a further reduction in relative ranking and/or in average pay, due to economic considerations which are also common to the other employers in the comparison group. Additionally, as referenced above, it is difficult to justify wage increases for Firefighters which are less than those extended to other City of Cudahy employees. Stated another way, both the inter-city and the intra-city comparisons take precedence over the difficulty of payment arguments advanced by the Employer. In the same connection, it must be reemphasized that the total dollar differences between the final offers of either party are relatively close.

The Medical Insurance Premium Impasse

Historically, the Employer has paid the full cost of medical and hospitalization insurance coverage for both single and family plan coverage for those in the bargaining unit. The Employer proposes

that it continue to pay 100% of the premium costs for 1982, but that the matter be reopened for negotiations between the parties if 1983 premium costs are increased by the insurer.

The Union proposes that the Employer continue to pay 100% of the insurance premium costs for the entire two year duration of the labor agreement.

The basis for the dispute between the parties relative to the payment of medical insurance premiums has been the significant increase in such premiums during the recent past. Employer Exhibits #15 and #16 show the dramatic increases in such costs during the time period between 1974 and the present, and offer an inter-city comparison which shows the disadvantageous position of Cudahy. Employer Exhibit #17 documents the five year rise in premiums between 1977 and 1982, and reflects a 231% increase in single plan premiums for the City and a 228.6% increase in family plan premiums.

The City again relied upon its dire economic circumstances, cited the fact that it currently pays the highest premiums among comparable cities, and suggested that employee premium participation is a method of cost control. It emphasized that it merely wants the opportunity to negotiate on any 1983 premium increases which may occur.

The Union relied upon the fact that the City had historically paid 100% of the health insurance premiums for those in the bargaining unit, that it had continued to do so for all other units of City employees, and that comparable cities continued to pay 100% of such premium costs. It emphasized its past cooperation with cost control steps, including the City's ability to self-fund and/or to change carriers, submitted that the City had failed to meet the very high burden normally required when interest arbitrators are being asked to take-away existing benefits and/or to modify well established past practices; and it challenged the legality of the City's final offer under Milwaukee Deputy Sheriff's Association vs. Milwaukee County, 64 Wis 2d 651, 88 LRRM 2169.

Preliminarily, the Arbitrator will reference the fact that I have read the cited case with interest, and find the situation at hand clearly distinguishable. Without reiterating the above discussion relative to the persuasive value of comparisons, the Arbitrator must recognize the persuasive force of the fact that all comparable cities continue to pay 100% of the medical and hospitalization insurance premiums for their Firefighters, and that the City of Cudahy continues to pay 100% of such premiums for all other groups of city employees.

The City's desire to negotiate on health insurance premium increases, rather than being expected to automatically pick-up such future increases, is a logical and understandable position for any employer. If the parties are unable to agree on a reopener, such a goal might be achieved through either a longer premium commitment from the insurer, or through reevaluation of the desirability of multiple year labor agreements. It must be recognized, however, that any interest arbitrator is reluctant to overturn established practices or benefits, unless the arbitral criteria are very clearly and persuasively met, and no persuasive case has been made for the modification of health insurance premiums in the situation at hand. Indeed, the comparisons within comparable cities and within the City of Cudahy strongly support the position of the Union.

The Vacation Allowance Impasse

In connection with its request for improved vacation benefits, the Association cited both comparisons with other City of Cudahy employees, and comparisons with firefighters in the comparable cities. The Union submitted that its vacation proposals would enable those in the unit to move up, one ranking in comparison with the firefighters in comparable cities. It additionally submitted that its vacation offer was comparable to the vacation allowances of certain other City employees, including various supervisors.

The Employer cited the differences in scheduling as between Firefighters and other city employees, and suggested that the Firefighters currently had the highest ratio of vacation time-off to hours-worked, of any group of City employees. It additionally cited the Firefighter's 56 hour work schedule, and submitted that they currently receive a considerably greater number of consecutive days off under the current vacation policy, than do other City employees. The Employer also argued that the comparison data with other cities was difficult to analyze because of the lack of information relative to the Firefighters' working schedules within the other cities. It submitted that no persuasive case had been made for the additional vacation benefits, beyond those presently provided for in the collective agreement.

Initially, the Arbitrator will observe that comparisons with comparable cities is somewhat difficult due to the fact that practices vary between the cities. Although three days is roughly comparable to one week of vacation for employees on a forty hour schedule, other cities, as is apparent from Union Exhibit #66, have not always increased their vacation allowances in one week increments. Additionally, Oak Creek, which grants only one week of vacation after one year of service, has the most generous cumulative allowance for those who remain for the full twenty-five years. Comparisons with other City of Cudahy employees is also made difficult by the different working schedules of the Firefighters. In reviewing the information in the record, the Impartial Arbitrator has found the following evidence to be persuasive relative to the vacation impasse.

(1) In comparing the total number of vacation days earned for a twenty-five year employee, as referenced in Union Exhibit #66, the average for the five comparable cities is 232.4 days. The present collective agreement provides for a total of 232 days, almost exactly the average benefit for the comparable cities.

(2) While comparisons within the City are difficult, pursuant to Union Exhibit #68, the proposed increase would place the firemen in a more advantageous vacation position than currently provided for those within the Police and D.P.W. bargaining units. While the proposed benefit increase would arguably make the Firefighters benefits comparable to those enjoyed by Cudahy City Officials and supervisory personnel, there is no indication that this group has been used for bargaining comparison purposes in the past.

As referenced above, neither comparisons within the City nor those with comparable cities justify the proposed improvements

in vacations. Additionally, and as emphasized by the City, the current economic climate simply does not justify the additional vacation benefits in question.

The Remaining General Considerations

The remaining major arguments advanced by the parties related primarily to the overall compensation criterion, to miscellaneous private sector comparisons, and to certain productivity arguments advanced by the Union.

In Employer Exhibits #13 through #17, the City cited the excellent level of benefits currently enjoyed by those in the bargaining unit, in the areas of uniform allowances, paid life insurance, paid retirement benefits, longevity, and annual sick leave; additionally, it again cited its extremely high current costs of health insurance premiums.

It is true that the overall level of fringe benefits in various areas, may offset the lack of certain benefits in another area. It would be unfair not to recognize, for example, if wage increases in certain years had been traded off for certain other considerations. While it is true that those in the bargaining unit have enjoyed excellent benefits, particularly in those areas cited by the Employer, there is no indication that the overall levels of fringes cited by the Employer, justify a lower salary level, or a reduction in the Employer's contribution for group medical and hospitalization insurance. Additionally, the significant growth in group medical insurance premiums for various other City employees has not resulted in any apparent reduction in wages or other benefits for these employees.

The Arbitrator will merely reference the fact that neither the alleged productivity of those in the bargaining unit, nor the unspecific private sector 1983 comparisons could be assigned definitive importance in the selection of the more appropriate of the two final offers.

Summary of Preliminary Conclusions

As summarized in greater detail above, the Impartial Arbitrator has reached the following summarized preliminay conclusions.

(1) In connection with the wage increase impasse:

(a) The average salaries historically paid to the top Firefighters or MPOs by comparable cities, and the relative rankings of these cities and the City of Cudahy, clearly favor the selection of the final offer of the Union.

(b) The average 1982 salary increases in the Police and the D.P.W. units, within the City of Cudahy, clearly favor the selection of the final offer of the Union.

(c) The recent and prospective decline in the size of 1983 public and private sector wage increases cannot be assigned definitive weight in the selection of a final offer, due to the fact that a substantial second year increase is included in the final offers of each party, and the final offers are not subject to modification by the Arbitrator. Additionally,

such information should not retroactively be assigned definitive weight in these proceedings.

(d) Increases in cost-of-living which occurred prior to 1980, cannot properly be utilized in the selection of the more appropriate final offer; such increases between 1980 and present, do not persuasively favor the selection of the final wage increase offer of either party.

(e) The depressed economic conditions and the difficulty of payment of wage increases, must be carefully considered by the Arbitrator, but there is no inability to pay issue; economic conditions, however, are not as persuasive as the intra-city and the inter-city comparisons referenced above.

(2) In connection with the medical and hospitalization insurance premium impasse:

(a) The inter-city and the intra-city comparisons strongly favor the adoption of the final offer of the Union.

(b) A persuasive case has not been made for the modification of the long standing practice of the Employer in paying 100% of the medical and hospitalization premiums; various alternative approaches to the matter might properly be addressed by the parties across the bargaining table.

(3) In connection with the vacation allowance impasse:

(a) Neither the inter-city nor the intra-city comparisons favor the proposed increase in vacation allowances.

(b) The current economic conditions do not favor the proposed additional vacation benefits.

(4) In connection with the overall merits of the final offers, neither the overall level of compensation, the productivity of those in the unit, nor the private sector comparisons can be assigned definitive importance in the selection of the final offer.

Selection of the Final Offer

After a careful consideration of all the statutory criteria and the entire record before me, including the preliminary conclusions referenced above, it is apparent to the Impartial Arbitrator that the final offer of the Union is more appropriate in the wage increase and insurance premium impasses, while the final offer of the Employer is more appropriate in the vacation allowance impasse. Since the Impartial Arbitrator is limited to the selection of the final offer of either of the parties, without modification, the final offer of the Union is the more appropriate of the two final offers.

1./ The Arbitration of Wages, University of California Press 1954, page 54. (footnotes omitted)
2./ Ibid. page 56. (footnotes omitted)
3./ Ibid. page 75. (footnotes omitted)

AWARD

Based upon a careful consideration of all the evidence and argument, and all of the various arbitral criteria provided in Section 111.77(6) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Cudahy Firefighters Association is the more appropriate of the two final offers before the Impartial Arbitrator.

(2) Accordingly, the Union's final offer, herein incorporated by reference into this award, is ordered implemented by the parties.

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

February 9, 1983