

----- X	:	WISCONSIN EMPLOYMENT
In the Matter of the Petition of	:	RELATIONS COMMISSION
	:	
BROOKFIELD PROFESSIONAL	:	
FIREFIGHTERS ASSOCIATION	:	
LOCAL 2051, IAFF	:	
	:	Case XLII
For Final and Binding Arbitration	:	No. 29658
Involving Firefighting Personnel	:	MIA-676
in the Employ of	:	Decision No. 20912-A
	:	
CITY OF BROOKFIELD	:	
	:	
----- X	:	

APPEARANCES

John K. Brendel, Brendel, Flanagan, Sendik & Fahl, S.C., on behalf of the Association

Tom E. Hayes, Godfrey, Trump & Hayes, on behalf of the City

On October 24, 1983 the Wisconsin Employment Relations Commission appointed the undersigned arbitrator pursuant to Section 111.77(4)(b), Wisconsin Statutes, in the dispute existing between the above identified parties. Pursuant to statutory responsibilities the undersigned conducted an arbitration hearing in the matter on January 9, 1984 at Brookfield, Wisconsin. Post hearing exhibits and briefs were filed and exchanged by February 14, 1984. Based upon a review of the evidence and arguments and utilizing the criteria set forth in Section 111.77(6), Wisconsin Statutes, the undersigned renders the following arbitration award.

SUMMARY OF ISSUES

During the course of the arbitration hearing the parties voluntarily resolved disputed issues contained in their final offers pertaining to the assignment of equipment operators, life insurance, and the promotion procedure. Pursuant thereto, said issues have been removed from the final offers which are at issue herein.

The issues which remain in dispute relate to the duration of the parties' agreement, wages, the recognition clause, vacations, and holidays.

The parties are also in disagreement as to what comparables should be utilized in this proceeding.

Because of the impact comparability has on the outcome of proceedings such as this, said issue will be discussed first. Thereafter, the relative merit of the parties' positions on the disputed substantive issues will be addressed, after which the undersigned will discuss the relative merit of each of the parties' total final offer.

COMPARABILITY

The Association believes that the most comparable fire departments are those located in West Allis, Wauwatosa, South Milwaukee, Greenfield and Waukesha. A second group of lesser comparables include Greendale, Whitefish Bay, Oak Creek, Glendale, West Milwaukee, Shorewood, Brown Deer and Cudahy. Furthermore, internal comparisons can be made between Brookfield's police

officers and firefighters.

The City argues that the most comparable fire departments are located in West Allis, Wauwatosa and Waukesha. The City also does not believe that the City police officers are comparable to the firefighters in this case.

POSITIONS OF THE PARTIES

Association Position

The Association argues that its five proposed comparable communities are most comparable to the City in this case because the parties had no dispute about their use in a prior arbitration proceeding. Also, both parties have utilized evidence referring to these municipalities in this proceeding.

These communities are closely comparable in population, area and in the number of available firefighting personnel and facilities. Furthermore, although the City argues that South Milwaukee has a much smaller force of only 15 union employees and 5 additional officers, it also has an additional paid "on call" force of 25, thus providing it with a trained force totaling 45 people.

The other communities are offered in order that a larger area can be referred to, even though the departments are appreciably smaller and further away.

The Association also argues that the City police officers are comparable to the firefighters in this case because historically the monthly salaries of the top firefighters and patrolmen have been very close, although the firefighters' salaries badly deteriorated in comparison in 1980 and 1981. While the City argues that they are not comparable, at least in part because ambulance service is conducted by the police, it is noteworthy that firefighters are periodically used to supplement such services and are now required to be trained as emergency medical technicians.

City Position

The City submits that the best comparables are West Allis, Wauwatosa and Waukesha, although all are different than the City in that they are older, and they have more dense, varied, and larger populations. While the Association bases its comparables solely on population, the evidence indicates that this is not a reliable indication of department size. The City's comparables are instead based upon proximity, which is the most generally accepted criteria for selecting comparables in proceedings such as this.

As for the proposed police comparison, the disparity between police and firefighter salaries has varied from a low of 2.9% to a high of 10.6%. The average for the 12 years preceding 1982 was 4.4%, and figures in this range are clearly predominant. Rather than being comparable, the firefighters' salaries have historically been lower than those of police officers. Thus, comparisons of these two groups should not be made based upon their historical relationship.

DISCUSSION

While it is true that some fire departments in the Milwaukee suburban area are more comparable to the Brookfield fire department than others based upon size, geographic proximity, and similarities in their duties and responsibilities, the undersigned believes for the reasons discussed below that all Milwaukee suburban fire departments for which there is relevant data in this record should be utilized as comparables in this proceeding in order to obtain a relatively reliable portrait

of the conditions of employment which exists among said departments for purposes of comparison with the final offers submitted herein.

The comparative analysis resulting therefrom will concedely be somewhat flawed in that differences do exist among said departments which may justify some differences in at least certain conditions of employment, and in addition, because complete and reliable data is not available in the record on all issues in dispute for each of the departments in question. Because of the incompleteness of the record in this regard, the undersigned has chosen to review and consider a broad and somewhat diverse population of fire departments in the Milwaukee suburban area in order to have a sufficiently large population of comparables to provide at least a moderately reliable indication of comparable conditions of employment. ✓

In support of the undersigned's decision in this regard is the fact that it is undisputed in the record that the parties have previously utilized all of these Milwaukee suburban fire departments in a previous interest arbitration proceeding, and that no dispute existed regarding their comparability at that time.

It should be noted that among the Association's proposed comparable fire departments, Waukesha will not be utilized herein because wage data for 1982 and thereafter is not available in this record for said department, and St. Francis will not be utilized since it does not currently employ individuals in the firefighter classification, which is the classification which has been utilized by the parties for purposes of comparison. In addition, the undersigned has only utilized comparability data which is not disputed in this record, the result of which is that there is a substantial amount of data in the record which has not been utilized because the undersigned has been unable to resolve disputed facts from the record evidence. Because the undersigned has relied solely on record evidence in making the comparisons discussed herein, errors which might exist in such comparisons may be based upon inaccuracies which exist in the comparability evidence which has been submitted and which was not disputed in this proceeding.

Lastly, the undersigned does not believe that there has been a sufficiently stable relationship between the conditions of employment of police and firefighting personnel in Brookfield to rely upon the comparability data pertaining thereto which has been submitted in this proceeding. In any event, in the undersigned's opinion, the most relevant comparisons to utilize in a proceeding such as this are between employer-employee relationships involving employees performing similar duties and with similar responsibilities, with similar training and experience, working in departments which are geographically proximate and generally of similar size. Comparisons with other employee groups, though relevant, are clearly less relevant than the foregoing comparisons, unless such comparisons cannot be made based upon record evidence.

DURATION AND SALARIES

The City proposes a two-year contract with a 6% increase beginning January 1, 1982, a 2% increase starting August 1, 1982 and a 7% increase beginning January 1, 1983.

The Association proposes a three-year contract with a 4% increase beginning January 1, 1983, a 4% increase starting July 1, 1982, a 2% increase on November 1, 1982, a 7% increase starting January 1, 1983 and a 6% increase with no other fringe benefit improvements starting January 1, 1984.

POSITIONS OF THE PARTIES

City Position

The usual term for collective bargaining agreements in fire departments is two years, with some one-year agreements. There has never been a three-year agreement in the City's fire department. The usual term of agreements covering other bargaining units in the City has been two years, with some one-year agreements, however, again there has never been a three-year agreement covering said units. In the Milwaukee metropolitan area, the most common term for such agreements is one or two years.

Furthermore, the Association's proposal for a three-year term did not appear until final offers were exchanged so the parties have never discussed this proposal at any time during negotiations. While such tardiness may not be unlawful, it certainly is not encouraging to productive negotiations between the parties without participation by outside agencies.

The City's salary proposal is higher than the Union's for the first six months of the agreement, although thereafter the Association proposal is higher. Compared to the salary levels in comparable municipalities, the City's proposal falls in the lower range, but in the same regard firefighter salaries in said communities are closely clustered, and a difference in rank only represents a small amount of difference in salary.

Furthermore, the City does not provide a full range of municipal services, while on the other hand, property owners have been subjected to sizable increases in their tax levies. These necessary increases have strained the ability of property owners to meet their property tax burden. Considering the increases that have been imposed on taxpayers, the City proposal keeps reasonably abreast of the salary pattern.

In addition, the salary increases proposed by the Association are well above any amount justified by inflation. Relatedly, the use in the cost of living reflected in the CPI index is misleading here because the component in the index which has increased most rapidly is medical expenses, and the City employees are largely insulated from this increase because it is absorbed by the insurance provided by the City.

Moreover, the Association wage proposal for 1984 is not supported by the trend in the cost of living index. The last figure available, that for December, 1983, indicates an annual rate of 3.6% while the figure for the full year ending in December is 3.8%. Furthermore, the one 1984 settlement known, Wauwatosa, does not support it either since it is a 4.4% increase.

Association Position

The Association believes that a three-year agreement is reasonable because the cost of this lengthy proceeding is shared by the Association's relatively small membership and thus it has been quite expensive and frustrating. In addition, it has resulted in extended denial of benefits due to the affected employees. During much of the negotiations, the Association would have been most willing to accept a two-year settlement, but by late 1983 when petitions for declaratory rulings were still forthcoming, the firefighters decided that they were entitled to at least one increase paid in the same year as it was bargained.

The 1984 increase is reasonable in view of economic trends, the losses already sustained by the firefighters, and the fact that the Association agreed to waive any fringes for 1984 although many should be due when compared to other municipalities.

Ability to pay is not an issue and the City's arguments pertaining thereto should not be considered.

The issue is largely one of the firefighters' need to return to a respectable competitive position among fellow City employees and among firefighters in comparable communities. Even if the Association's proposal is selected, the firefighters will remain last among the Department's comparables in both 1982 and 1983, and they will still be paid less than the police officers in the City. The Association is merely asking for a catch-up in order to become more competitive with firefighters in other communities and with other City employees.

Furthermore, the Association, in order to achieve this end, is giving up almost all fringe benefit improvements for 1982 and for 1984. Also the record shows that the Association's proposal is cheaper for the City in the first year and almost comparable in the second, therefore, the City actually benefits in that its base pay is raised for future comparable purposes at very little expense. The Association's proposal is therefore the more reasonable of the two at issue herein.

DISCUSSION

The undersigned has constructed the following chart to assist in an analysis of the comparability of the parties' positions on wages. It should be noted that the chart reflects actual year end salaries and the dollar increases that have been granted, using the end of the year as a constant benchmark. The undersigned recognizes that there are a number of other ways to compare wages and wage improvements, but based upon the availability of data contained in this record, this basis of comparison provides the most useable data, and therefore it has been utilized herein, even though it contains certain deficiencies such as the fact that it does not necessarily reflect the value of increases granted in any given year.

It should also be noted that the parties have both provided comparability data pertaining to the maximum firefighter rate of pay, and accordingly, such data has been utilized as the basis for the comparability analysis contained herein.

Top Firefighter Year End Salaries

City	1981 \$/Mo	1982 \$/Mo	\$ Increase	1983 \$/Mo	\$ Increase	1984 \$/Mo	\$ Increase
West Allis	1794	1979	185	D*	N/A**	N/A	N/A
Wauwatosa	1710	1938	228	D	N/A	2199	N/A
South Milw.	1772	1961	189	N/A	N/A	2117	N/A
Greenfield	1806	D	N/A	2049	N/A	2172	123
Greendale	1729	1976	247	2002	26	N/A	N/A
Whitefish Bay	1744	1939	195	2085	146	2190	1015
Oak Creek	1739	1935	196	2032	97	N/A	N/A
Glendale	1690	1932	242	D	N/A	N/A	N/A
West Milw.	1763	D	N/A	D	N/A	N/A	N/A
Shorewood	1733	1927	194	2044	117	D	N/A
Brown Deer	1666	D	N/A	2007	N/A	2123	116
Cudahy	N/A	1922	N/A	2098	176	2172	74
Average	1741	1945	209	2045	112	2178	105
Brookfield	1723	1862C*** 1900U****	139C 177U	1993C 2033U	131C 133U	N/AC 2155U	N/AC 122U
+/- Average	- 18	-83C -45U	-70C -32U	-52C -12U	19C 21U	N/AC -23U	N/AC 17U
Rank	9/11	10/10C 10/10U		8/8 C 5/8 U		N/AC 5/7U	

*Disputed
 **Not Available
 ***City
 ****Union

The comparability data contained in the above chart indicates that for 1983 the Association's proposed salaries and increases are the more comparable of the two submitted herein. For 1983, while the Association's proposed salaries are somewhat more comparable than the City's, the dollar increases proposed by both parties are relatively indistinguishable. For 1984, the Association's proposed salaries remain in the mainstream among those departments which have agreements covering that year, and its proposed dollar increase, though on the relative high side, is not out of line with increases which have been agreed upon to date.

With respect to the duration of the proposed agreement, although a three-year agreement appears to be somewhat unusual among the comparables, in view of the fact that the parties have spent approximately two years negotiating the agreement in question, and in view of the fact that said agreement will not be concluded until almost four months of the 1984 calendar year have elapsed, and lastly, in view of the fact that the Association's proposal does not appear to be out of line with the settlement pattern which seems to be emerging among the comparables for said year, it is the undersigned's opinion that under these factual circumstances the Association's proposal for a three-year agreement seems to be appropriate and in the best interest of the parties' relationship.

Based upon the foregoing considerations, the Association's three-year salary proposal appears to be the more comparable and the more reasonable of the two submitted herein.

Although said proposal appears to be somewhat in excess of recent cost of living increases, it is the undersigned's opinion that the most objective measure of what constitutes a reasonable response to such increases is an established voluntary settlement pattern among comparable employer-employee relationships, and in that regard, for the reasons discussed above, the Association's proposal merits selection herein.

With respect to the interests and welfare of the public affected by the parties' agreement, this record fails to demonstrate that adoption of the Association's proposal will require politically unfeasible or statutorily prohibited tax increases; in fact, there has been no showing that adoption thereof will result in any tax increases at all. Furthermore, the City has failed to demonstrate that any adverse effects such as the harmful elimination of services or a need to engage in long-term borrowing will flow from adoption of the Association's proposal. Absent such evidence, the undersigned has no basis for concluding that the Association's wage proposal will have an adverse impact on the interests and welfare of the public, and thus there is no basis in this record for not selecting the more comparable of the two wage proposals.

Based upon all of the foregoing considerations, it is the undersigned's opinion that the Association's wage proposal is the more reasonable of the two submitted herein.

RECOGNITION CLAUSE

The City proposes that the recognition clause contain the following additional sentence: "The above is merely to describe the bargaining representative and not for any other purpose."

POSITION OF THE PARTIES

City Position

The City's proposal that the recognition clause should be qualified by the addition of a statement that the clause is solely for the purpose of identifying the bargaining representative is in compliance with WERC Decision 20093A Milwaukee Board of Directors (1983). Without such a qualification, the clause is permissive.

Association Position

The issue here only came to light for the first time when the final offers were exchanged between the parties. At no time prior to the exchange of final offers had there been any requests for such a modification nor an explanation for a need for such change. Neither has there been a persuasive explanation for the need for such a change since that time.

DISCUSSION

While it would appear based upon relevant WERC decisions,^{1/} that the absence of the proviso proposed by the City might have made the Association's position on this issue a permissive subject of bargaining, if the City wished to have a determination made on such issue, the issue should have been brought before the WERC in a declaratory ruling proceeding. The undersigned does not believe he has the jurisdiction to make such determinations.

In view of the fact that no such objection was raised by the City during the exchange of final offers, the undersigned does not believe he has the authority herein to dispose of the merits of the City's claim, and therefore he declines to do so. Since no determination can be made herein on the merits of the City's claim, this issue will not be considered by the undersigned in determining the relative merit of the parties' total final offers.

VACATIONS

The Association proposes an increase from four to five weeks vacation after March 31 of an employee's 20th year. The Association also proposes that two employees per platoon be allowed off on 15 vacation selections. Both changes were to become effective in 1983. The City proposes no change from the prior agreement which provided in the above regard for four weeks of vacation after March 31 of an employee's 15th calendar year. An agreement also apparently exists that two firefighters per platoon could be off only in June, July, August, November and Christmas week.

POSITION OF THE PARTIES

Association Position

The fifth week of vacation benefit after 20 years is reasonable in that it has been included for at least the past two years in the agreements covering the City's other two principal bargaining units. There is no valid reason why the firefighters should not be permitted to enjoy the same benefit. While it is true that the firefighters' hours are different than other City employees, the firefighter is on duty 56 hours per week as opposed to the 37 hours police officers are on duty.

A week's vacation for a firefighter consists of three 24-hour periods, thus five weeks vacation equates to 15 tours of duty. In all other categories the firefighter receives the same number of weeks off for the same number of years of service as other employees working for the City. There is no logical reason why the same number of weeks of vacation for the same number of years of service as is granted to other City employees should be denied firefighters because of their differently scheduled work week.

The Association's request is in line with vacation benefits in other comparable fire departments, all of which give recognition for the extended services of employees in this regard. The City on the other hand offers nothing with respect to this issue.

^{1/}Sauk County, Dec. No. 18565, 3/81, and Milwaukee Board of School Directors, Dec. No. 20093-A.

As for vacation selections, while now two firefighters per platoon are permitted off during prime vacation dates, experience has shown that some firefighters, for personal reasons, have preferred to have available to them the right to select vacation times during the normally unpopular months. This position is reasonable, particularly when considered in light of the fact that a vacation's purpose is to provide employees with time off for physical and mental restoration at a time they either desire or feel they need such vacations.

The Association's requests in this regard is responsible, modest, and reasonable, particularly when compared with the vacation benefits available to other City employees.

City Position

The request for improvement in vacation entitlement is based primarily on the practice of the City in other bargaining units. However, the work week for firefighters is distinctly different than all other City employees. Most municipalities have recognized this difference by measuring vacation allowance in terms of work days, and sometimes work hours. Assuming that the City firefighters work three days a week, which is a somewhat generous calculation, and the fact that they are currently granted up to 12 days off, their vacation benefit is slightly better, in percentage terms, than other employees in the City.

Furthermore, the proposal of the Association is far more generous than any other municipality since it provides for the longest vacation for the shortest period of time.

Most significant, the Association's proposal does not deal with an existing situation nor one that will occur under this agreement since no firefighter in the City will attain 20 years of service until after the agreement expires. The Association will thus have another chance to negotiate this improved benefit before it could be implemented.

As for the vacation selection issue, most municipalities have a limitation on the number of firefighters who can be absent on vacation at one time. In many cases the Chief prepares a schedule indicating when employees may take vacations and how many may be absent on vacation at a time, and the employees thereafter make their selections from the designated available periods.

The Association's proposal will severely strain the Department's staffing needs. The Department's need to provide effective continuous protection to the community should be superior to the wish of an employee to have a particular vacation period. There is no contention that employees are not obtaining all of their vacation entitlements. The City's position therefore must be deemed the more reasonable of the two.

DISCUSSION

Neither party has made a compelling, persuasive argument in support of their position on this issue. In this regard, the Association has failed to demonstrate that current vacation benefits are appreciably less than or different from vacation benefits afforded firefighters in comparable departments. In fact, based upon the rather scanty evidence on this issue in this record, there does not appear to be a consistent pattern among the comparables regarding this fringe benefit which provides a fair basis to make such comparisons. On the other hand, the City has failed to demonstrate in a persuasive manner how its manpower needs would be adversely affected if the Association's request that two individuals per platoon be allowed to take vacations at any time were implemented.

In view of the lack of a compelling reason for the improved vacation benefit based upon relevant comparability data, the

undersigned is of the opinion that the change proposed by the Association does not appear to be justified at this time, and accordingly, the City's position on this issue is deemed to be the more reasonable of the two submitted herein.

HOLIDAYS

The Association proposes that holiday compensation be paid at $\frac{1}{2}$ day (12 hours) at straight time. The City proposes that the method of payment increase from \$60.00 to \$66.00 per holiday.

POSITION OF PARTIES

Association Position

The Association proposal is simply a request for equal treatment within the City for benefits already in existence. Police officers receive either \$56.00 per day or their hourly rate, whichever is larger. If the firefighters were granted similar language, on only a 12-hour basis, the difference between the annual payment for police and firefighters would only be an extra \$23.60 for the firefighters because their hourly rate is so much lower. Considering the additional time that the firefighters work in a calendar year to earn that money, this should not seem disproportionate or unreasonable.

As for other communities, many alternatives are being utilized by the various departments on this issue. The City's choice is to eliminate off time and the question then is what is the most equitable form of payment in lieu thereof. The Association's proposal clearly is comparable with the benefits being provided by the City in the Police Department.

City Position

The City's proposal calls for a 10% increase in the cash payment provided in lieu of holidays. The Association proposes a formula which would increase the payment by 50%. The Association proposal, given existing economic conditions, is excessive and unreasonable.

The City's approach is used frequently by other municipalities when dealing with holiday pay in lieu of time off. This basic formula has been in use in the City for a number of years and the dollar figure has been adjusted regularly in recognition of inflation. The City's approach is therefore the more reasonable of the two.

DISCUSSION

Again, the record does not indicate a clear pattern of holiday benefits in comparable departments which supports the Association's request herein. In view of the absence of such a justification for change, and in view of the City's proposed improvement in the benefit, the undersigned is of the opinion that the City's position on this issue is the more reasonable of the two submitted herein.

TOTAL FINAL OFFERS

Based upon the foregoing considerations it is the undersigned's opinion that the Association's total final offer is the more reasonable of the two submitted herein. This conclusion is based upon the premise that the disputes over wages and the duration of the agreement are more significant to both parties than their disputes over holidays and vacations. Since the Association's position on the more significant issues in dispute has prevailed for the reasons discussed above, pursuant to statutory responsibilities the undersigned is required to select the Association's total final offer, and accordingly, the undersigned hereby renders the following:

ARBITRATION AWARD

The final offer submitted by the Association herein, as modified pursuant to the agreement of the parties discussed above, shall be incorporated into the parties' collective bargaining agreement covering 1982, 1983 and 1984.

Dated this 13th day of April, 1984 at Madison, Wisconsin.

Byron Yaffe
Byron Yaffe, Arbitrator