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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

BEFORE THE ARBITRATOR

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 In the Matter of the Petition of :
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 WAUKESHA FIREFIGHTERS, LOCAL 407, :
 IAFF, AFL-CIO-CLC :
 :
 for Final and Binding Arbitration : Case LI
 Involving Firefighting Personnel : No. 31133
 in the Employ of : MIA-747
 : Decision No. 21299-A
 CITY OF WAUKESHA (FIRE DEPARTMENT) :
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APPEARANCES: Brendel, Flanagan, Sendik & Fahl, S.C.,
 Attorneys at Law, by JOHN K. BRENDEL,
 appearing on behalf of the Association.

Michael, Best & Friedrich, Attorneys at Law,
 by MARSHALL R. BERKOFF and THOMAS P. GODAR,
 appearing on behalf of the City.

ARBITRATION AWARD

The City of Waukesha (Fire Department), hereinafter referred to as the City or Employer, and Waukesha Firefighters, Local 407, IAFF, AFL-CIO-CLC, hereinafter referred to as the Association, were unable to voluntarily resolve certain issues in dispute in their negotiations for a new 1983-1984 Collective Bargaining Agreement to replace their expired 1981-1982 Collective Bargaining Agreement. The Association, on February 1, 1983, petitioned the Wisconsin Employment Relations Commission (WERC) for the purpose of initiating municipal interest arbitration pursuant to the provisions of Section 111.77 of the Wisconsin Statutes. The WERC investigated the dispute and, upon determination that there was an impasse which could not be resolved through mediation, certified the matter to compulsory final offer arbitration by Order dated January 6, 1984^{1/}. The parties thereafter selected the undersigned from a panel of arbitrators submitted to them by the WERC and the WERC issued an Order, dated February 9, 1984, appointing the undersigned as arbitrator. Hearings were held at Waukesha, Wisconsin on April 5 and 9, 1984, at which time the parties presented such evidence and arguments as they wished to introduce. The Association presented its argument along with its exhibits and the City filed a post-hearing brief, which was received on May 26, 1984. On July 14, 1984 the Association filed a reply and on August 10, 1984 the City filed its response to certain matters raised in the Association's reply brief. Full consideration has been given to the evidence and arguments presented in rendering the award which follows.

THE ISSUES IN DISPUTE

The final offers exchanged through the WERC investigator

^{1/} A substantial portion of the delay between the filing of the petition and the certification of the impasse was attributable to the pendency of a declaratory ruling proceeding initiated by the City.

and attached to his report to the WERC reflect that there are five major issues in dispute, dealing with wages, holidays, acting pay, life insurance and health insurance.

WAGES

Both parties propose that the duration of the agreement be for two years, consisting of calendar year 1983 and calendar year 1984. The City proposes that in the first calendar year all bargaining unit employees be granted two wage increases. The first wage increase of 5% would be retroactive to January 1, 1983 and the second wage increase of 1.5% would be retroactive to July 1, 1983. In the second year of the agreement, under the City's proposal, a 4% increase would be granted retroactive to January 1, 1984 and a 2% increase would be granted retroactive to July 1, 1984.

Under the Association's proposal on wages a total of three wage increases would be granted during the first year of the agreement. It proposes a 4% increase retroactive to January 1, 1983, a 3% increase retroactive to July 1, 1983, and a 2% increase retroactive to October 1, 1983. In the second year of the agreement, under the Association's proposal, two additional increases, identical to those proposed by the City, would be granted. On January 1, 1984 a 4% retroactive increase would be granted and on July 1, 1984 a 2% retroactive increase would be granted. In addition, as part of its final offer on wages, the Association proposes that "all contractual computations are to be specified and paid on the basis of a bi-weekly salary." Currently, all salaries and salary computations in the Fire Department are based on a monthly salary computation.

There are approximately 77 bargaining unit personnel in the Fire Department including 12 lieutenants, 15 equipment operators, 36 firefighters, 12 paramedics, and 2 inspectors. Three captains were previously included in the bargaining unit but were excluded from the bargaining unit in August 1982 as a result of a WERC determination, after the City went from two to four fire houses and otherwise reorganized the department. There are four other managerial or supervisory personnel consisting of the chief and three assistant chiefs. Under the terms of the agreement, equipment operators and paramedics are compensated in accordance with the same five step salary schedule as other firefighters, with each step being payable during the first through fifth year and above. Equipment operators and paramedics receive a premium for the performance of such duties. The above described proposed percentage wage increases would be applied to the existing salary figures for fire fighters, inspectors, and lieutenants, and, in the case of the Association's proposal, the computed salary figures would be converted to bi-weekly salary figures. However, in the parties' evidence and arguments, they focus on the five year monthly salary for firefighters, which is received by a majority of the bargaining unit.

As a result of 10% wage increases granted on January 1, 1981 and January 1, 1982, the monthly salary for a fifth year firefighter was \$1,862.00 at the conclusion of the parties' two year voluntary agreement for 1981-1982. Under the four split increases proposed by the City, that figure would increase by \$122.00 in 1983 and an additional \$121.00 in 1984. The monthly rate for a five year firefighter as of July 1, 1984 and thereafter would be \$2,105.00, under the City's offer.

This proposal would provide a "lift" of 6.58% in the first year and 13.05% by the end of the second year.

Under the five split increases proposed by the Association, the salary for a five year firefighter, expressed as a monthly figure, would increase by \$172.00 during 1983 and by an additional \$124.00 in 1984. This would result in a salary figure, again expressed as a monthly figure, of \$2,158.00. The "lift" provided by the three split increases in 1983 under the Association's offer would equal 9.26% in the first year and 15.9% as of July 1, 1984 and thereafter. The Association points out, as part of its arguments, that the utilization of split increases softens the cost impact during 1983 so that the net difference between the parties' offers in the first year amounts to approximately \$66.00 for a five year firefighter. In the second year the dollar difference would jump to \$630.00, even though the parties' proposed percentage increases in the second year are identical. This is due to the additional "lift" provided in the first year under the Association's offer. The City points out that such additional lift which amounts to 2.69% in the first year and 2.35% by the second year, will constitute an additional cost for future years.

HOLIDAYS

The 1981-1982 Collective Bargaining Agreement contained the following provision dealing with holidays;

"ARTICLE 13 "HOLIDAYS

"Section 1: Every 56 hour unit employee shall be entitled to 120 hours of compensatory off time in lieu of holidays. The City may, on or before June 1, annually, by agreement with the employee, compensate any employee at the employee's regular hourly rate in exchange for any number of hours agreed to.

"Section 2: Forty (40) hour unit employees shall be entitled to 10 paid holidays payable per existing practices."

The number of hours of compensatory time granted to bargaining unit employees who work a 56 hour week, pursuant to the normal nine day cycle for firefighting personnel, was increased from 80 to 120 hours pursuant to an arbitration award issued by Arbitrator Sharon Iams on June 11, 1981, covering the calendar years of 1979 and 1980. As part of its final offer the Association proposes to amend Section 1 of Article 13 to provide for 144 hours instead of 120 hours of compensatory time off for employees who work a 56 hour week pursuant to the nine day cycle. The City proposes no change in the amount of compensatory time off for holidays.

ACTING PAY

After July 1, 1982 the City hired three additional firefighters in an effort to reduce its overtime costs incurred in connection with granting paid time off to bargaining unit personnel for purposes such as vacations, holidays, funeral leave, and sick leave, including increased time off granted pursuant to the

Iams award. According to documents entered into evidence at the hearing, the City continued to experience high overtime costs, particularly in the officer ranks, and instituted a new practice in late 1982, of assigning firefighters to act as "acting lieutenants" at stations 2, 3, and 4 for additional compensation in the form of "acting pay" in the amount of \$18.50 per 24-hour shift. By making such assignments rather than calling back lieutenants on an overtime basis, the City was able to save approximately \$287.00 per shift worked by an acting lieutenant instead of a called back lieutenant. The initial implementation of this practice for certain enumerated shifts was accomplished by ordinance and was not objected to by the Association. However, during the negotiations for the current agreement, the Association proposed that an acting pay provision be included in the agreement.

It was apparently an early proposal dealing with acting pay that, in part, resulted in the filing of a declaratory ruling petition by the City. After that dispute had been resolved the Association's acting pay proposal, dated October 31, 1983, read in relevant part as follows:

"When any unit employee is assigned to act in the stead of another department employee of a different classification or rank and which pays a greater salary or premium than the acting employee is regularly receiving, such acting employee shall be paid for that tour of duty in the greater amount equal to the salary and premiums of the employee being acted for."

During the pendency of the negotiations and this proceeding, the City has apparently continued to assign firefighters to perform the duties of "acting lieutenants" on occasion pursuant to a second ordinance and a motion to continue said practice. There is no indication in the record that the City has appointed any lieutenants to serve as "acting captains" or that it has designated any firefighters to act as equipment operators or paramedics without paying them the premiums provided in the agreement. While the City does not indicate that it intends to abandon the practice of paying acting pay to acting lieutenants, it objects to the Association's proposal to include the above quoted provision in the agreement and would, by its final offer, leave the agreement silent on such matter.

LIFE INSURANCE

For a number of years the parties' agreement has included a provision which provides that the City will pay the full premium for life insurance benefits which are to be based upon the employee's salary base, rounded up to the next highest \$1,000.00. Paramedic and equipment operator monthly premiums are included as part of base salary for this purpose. Although there is a conflict in the testimony as to when the City increased the amount of insurance provided by an additional 25% for this particular bargaining unit, the evidence is undisputed to the effect that such increase was implemented a number of years ago because of then existing favorable claims experience. The parties' 1979-1980 Collective Bargaining Agreement specifically made reference to the additional 25% of life insurance benefits provided, as a result of the Iams award.

After the City had increased the amount of life insurance benefits guaranteed to the instant bargaining unit and the other bargaining units in the City, certain things took place which caused the projected premiums for life insurance to increase

substantially. By letter dated July 6, 1982, the City was notified by the insurance carrier that, largely as a result of the decision of the school district to negotiate a separate group life insurance program, the claims experience for the City had taken a substantial turn for the worse and that it would be necessary to increase the premium from .41¢ per \$1,000.00 per month to .92¢ per \$1,000.00 per month. Thereafter, the City took steps to avoid this projected increase, primarily by separating out certain high risk groups from the general policy which covers the Fire Department and certain other departments.

In its final offer the City proposes to eliminate the provision contained in the expired 1981-1982 Collective Bargaining Agreement which requires that it increase the amount of insurance provided by 25% over the rounded salary amount. In the meantime, the City has continued such coverage for bargaining unit personnel in order to maintain the status quo pending completion of negotiations. The evidence discloses that the City has negotiated elimination of the 25% add-on to life insurance coverage from the contracts covering other personnel. Coverage for non-represented personnel, including the management personnel in the Fire Department, currently continues at the 125% level, according to the evidence.

In its final offer, the Association proposes no change in the life insurance provision. Thus, if the Association's final offer is selected the City will be obligated to continue to provide life insurance benefits at the 125% level, as provided for in the expired agreement.

HEALTH INSURANCE

Also, for a number of years, the parties' agreement has included a provision which requires that the City provide, at its expense, hospitalization and surgical care insurance. Under the terms of the agreement the City is free to change carriers or self-insure, provided the coverage is identical to the coverage in effect at the time the agreement was entered into. In recent years the City has self-insured most claims under the hospitalization and surgical care insurance program provided, but has utilized an insurance carrier for purposes of administration. The company which administers the plan for the City establishes the premium charges for family and single coverage and has, in the past, offered the City two options. The first option provides for a fixed premium amount for family or single coverage which is generally higher than the second option. Under the second option the City pays a lower premium for family and single coverage but is required to contribute additional sums toward the cost of coverage, based upon claims experience. Any excess in the premiums over and above the cost of providing coverage and administration is banked for purposes of covering the cost of future coverage and administration. In recent years the City has always selected the second option.

As part of its final offer in this proceeding, the City proposes to substitute the following provision for the existing provision dealing with health insurance.

"The City will pay the monthly cost of the employees' group hospital, surgical, and medical insurance presently provided to employees and members of employee's families as may be applicable up to the following amounts:

Single Plan: \$ 66.73
Family Plan: \$183.68

"In 1984, if the group health insurance coverage costs increases above these stated amounts, the City will pay the cost of such increases in 1984.

"The City has the right to change carriers or self-insure providing the coverage is identical to the coverage now in effect."

In its final offer, the Association has proposed no change in the health insurance language. Thus, under the Association's proposal, the City would be obligated to continue to pay the full cost of health insurance coverage, regardless of which option it selected or which insurance carrier it selected if it terminated its self-insurance practice, during negotiations for any successor agreement. The Association points out that, prior to the 1979-1980 Collective Bargaining Agreement the City had agreed to pay the full cost of health insurance coverage, identified as a dollar amount, and that during the protracted negotiations and arbitration which occurred in connection with that agreement, its members were required to absorb the increases in health insurance costs, pending the conclusion of negotiations. For this reason, it would continue to exclude the dollar amounts from the agreement and continue the existing language which requires that the City provide "at its expense" hospitalization and surgical care insurance.

CITY'S POSITION

In its brief, the City addresses each of the five issues in dispute separately. They are discussed in the order presented above.

WAGES

According to the City, the testimony and exhibits support the reasonableness of its wage offer. First, it argues that the City's voluntary settlements with all of its other employee units was consistent with its final offer in this proceeding and that such fact should be given "great deference" by the arbitrator. Similar percentage increases were granted to 83 employees in the Police Department, 20 employees in the Sewerage Treatment Department, 72 employees in the Streets and Parks Department, 4 building inspectors, 19 engineers and technicians, and 16 incinerator plant employees. Further, the dollar increases generated for firefighting personnel equal to or exceed the dollar increases granted all other employees of the City. The increases sought by the Association would be \$53.00 per month more than the largest gain received by any represented employee, according to the City.

The importance of maintaining internal equity has been recognized by arbitrators, according to the City. This is because the upsetting of internal equity can result in significant labor relations problems, including declines in morale and the use of whip sawing techniques by unions in future negotiations. In support of this argument, the City cites a number of arbitration awards and quotes extensively from their rationale.

One example of the adverse impact, according to the City, relates to the relationship between police and firefighter salaries at the fifth year step. This problem was discussed in the earlier, Iams award and, according to the City, the City granted an additional 2% to the police employees in 1982 to reestablish equity after the Iams award. The City points out that its offer would maintain equity between police and firefighter's salaries at the fifth year step and argues that it would be very disruptive to this relationship and labor relations

and morale within the City if firefighting personnel received more than police personnel during the term of this agreement.

The voluntary settlements reached also are indicative of what constitutes a realistic and fair wage offer, according to the City. Therefore, it argues, the fact that six other bargaining units voluntarily reached agreement on the same or nearly the same wage increases as those offered herein, strongly supports the City's position. The Association should not be "rewarded" for its refusal to accept this reasonable offer, according to the City.

Contrary to the Association's position, the City also argues that its last offer compares favorably to the rates paid to firefighters in comparable municipalities. In making this argument, the City compares its offer to ten other cities which it contends are comparable because of their size, number of employees, location, and "free standing" status. According to the City, the comparables relied upon by the Association are not proper comparables because they are "dependent suburban communities" of Milwaukee and therefore different than Waukesha, which has its own industrial base and does not rely upon the City of Milwaukee to create employment opportunities or to "dictate employment patterns." The ten cities in question are: West Allis, Wauwatosa, Greenfield, Janesville, Oshkosh, Sheboygan, Beloit, Fond du Lac, Appleton, and Manitowoc.

Using these cities for comparative purposes, the City argues that its 1983 wage offer would put it ahead of all but three of the ten comparable communities and that the percentage increase offered would exceed that offered by any of the other comparable communities. In 1984, its wage offer would be greater than all but two of the comparable communities and its percentage increase offer would be greater than any of the comparable communities. In contrast, according to the City, the Association's request is much greater than any comparable community, expressed as a percentage for 1983, and the wage rate achieved by 1984 would be substantially in excess of the wages received by most firefighters in comparable communities. The City also points to the fact that firefighters in its department receive premiums for working as equipment operators and paramedics and receive longevity pay.

According to the City, the Association's "catch up" argument must fail because its comparable communities are inappropriate and because there can be no justification for this argument in light of "overall economic conditions." The Association relies on a limited group of primary comparables consisting of Brookfield, West Allis, Wauwatosa, and Greenfield, which were accepted by Arbitrator Iams. The City points out that the arbitrator herein is not bound by such prior determination and argues that the comparables offered by the City are at least as persuasive and offer a broader basis for comparison. In fact, according to the City, the Union recognizes the limited value of its primary comparisons when it attempts to include a number of additional "bedroom" communities which have no independent industrial base to rely upon. According to the City, this latter group is dominated by Milwaukee, which is really in a class by itself, and does not present a realistic basis for comparison purposes.

Further, according to the City, the Association has not demonstrated that there is a continuing "erosion" in its relative rank in relation to the alleged comparables. Therefore, it argues, since the City's offer either meets or exceeds the dollar

increases offered in other communities, its "catch up" argument should be rejected. No catch up is needed to restore relative position and there is no justification for requiring the City to pay wages equal to or in excess of the comparables selected by the Association.

If the catch up argument is rejected and the City's offer is compared to the Association's comparables based on dollar increases or percentage increases, the City's dollar and percentage increase offer for 1983 is greater than two of the Association's primary comparables and generally exceeds the wage and percentage increase of its secondary comparables. The partial data available for 1984 establishes that the City's percentage offer is greater than any community and its dollar offer is nearly the same as any of the reporting communities, whereas the Association's offer is nearly \$50.00 more per month than the average. In this connection the City reemphasizes that the comparisons do not take into account longevity pay or premium pay or the City's estimated \$12,000.00 "hidden cost" that would result if firefighter pay is calculated on the bi-weekly rather than a monthly basis.

The City also points to the "economic profile" of a typical firefighter in terms of wage and fringe benefits. It calculates that the annual value of its wage and fringe benefit package for 1983 is more than \$34,500.00 and is nearly \$37,000.00 for 1984. The two year increase in its offer is nearly equal to \$6,000.00 and will cost nearly \$500,000.00 in new money, according to the City. On the other hand, the Association's offer would cost nearly \$575,000.00 and represents an increase of nearly 20% over the 1982 costs, according to the City's calculations. Perhaps more important than the increased cost of the Association's offer for 1983 and 1984, according to the City, is the anticipated future cost of the additional "lift" provided in its offer. The affect of that lift is graphically demonstrated by the increase in the annual cost of the agreement between the two years in spite of the identical wage increases proposed for the second year. In connection with this argument, the City cites a number of arbitration awards giving consideration to the ultimate wage rate established by the agreement, because of this phenomenon.

Additional factors considered by the City in determining its final offer also support its position, it is argued. These factors include the City's financial status and the state of the economy. While the City does not claim an inability to pay increases sought by the Association, it points to a number of austerity actions taken by the City to deal with the financial difficulties it has experienced since 1982. Those actions include a hiring freeze, delay in filling vacancies, and directives that budgets be reduced in every department. The City contends that its offer is realistic, given these austerity moves required by current circumstances, and in relation to increases being granted employees in the private sector, as reflected in various reporting publications. According to the City, published data indicates that wage increases during 1983 and 1984 have been extremely modest and in some cases wages have actually decreased. The cost of living, as measured by the CPI-U (all urban consumers) only increased 3.8% during the one year period prior to January 1983. While the Milwaukee average was slightly higher at 4.7%, the City points out that its January 1, 1983 increase alone would exceed that rate. Further, it is argued that the CPI figures tend to overstate the effect of inflation on individuals because of unrealistic assumptions not applicable to most consumers. The same figures for the one year preceding January 1984 were 4.1% and 3.0%

respectively, according to the City, and these figures likewise support the City's offer, it is argued.

The City also points to testimony to the effect that 200 individuals recently applied for positions as firefighters at existing salary levels as evidence that the increases offered by the City are more than adequate to attract applicants. Also, relevant in this connection, is the evidence indicating that a number of private sector area employers have either frozen or cut wages of non-represented employees because of adverse economic conditions during the two years in question.

HOLIDAYS

The City points out that under the "California plan" utilized for purposes of scheduling firefighters, firefighters are scheduled to work approximately 107 days (for 24 hour shifts) and are scheduled to be off work the remaining 258 days. It argues that in spite of this off time schedule which "would be the envy of many" the Association requests an additional 24 hours of holiday pay and time off which would result in a total of 144 paid holiday hours per firefighter. With six 24 hour periods of holiday time a firefighter could be off work for two nine day cycles in addition to the blocks of time off that can be taken for vacation purposes. A firefighter with three weeks of vacation pay eligibility could be off work for 22 days in a row for holiday purposes and 30 days in a row for vacation purposes under the Association's proposal.

The City compares the holiday hours of firefighters with other represented City employees and notes that firefighters receive approximately 50% more holiday time off than do other City employees. The City points out that this differential was created by the Iams award and argues that it is contrary to the City's longstanding effort to maintain reasonable consistency in fringe benefits among City employees. Under the Association's proposal, the differential would be increased to more than 70% and would have a similar "debilitating" effect on employee relations as would the Association's wage proposal, according to the City.

The City also contends that the Association's proposal would adversely affect the City's ability to contain overtime costs. In this regard, it relies upon the testimony of Assistant Chief Seidl with regard to the difficulty of maintaining minimum manning under current time off provisions as the City's work force matures and his conclusion that substantial overtime costs or a reduction in minimum manning requirements would have to occur if the Association's proposal is granted. The City contends that it was required to hire three new firefighters in late 1982 to accommodate the increased time off which resulted from the Iams award and argues that the Association's proposal runs contrary to the City's efforts to contain overtime costs. The Association's proposal that the minimum manning could be maintained by management personnel is unreasonable and would result in adverse morale among such employees. According to the City, if it elected to hire three additional firefighters to absorb this additional time off and maintain manning levels, it would cost the City approximately \$110,000.00, based on the 1984 rate and benefits for five year firefighters.

According to the City, holiday pay was historically provided so that an employer could close its operations without reducing the pay of its employees. Because firefighter holidays are taken in blocks of time off and are a "compensatory" benefit, there is no justification for additional time off, according to

the Employer. This is so because firefighters work less than one-third of the days of the year and already receive more time off for holiday purposes than do other City employees.

ACTING PAY

According to the City, the Association's acting pay proposal is confusing, overbroad, and unwarranted in light of the City's actions creating an acting lieutenant's position. The City notes that the Union raises no specific objection to the acting pay practice established by the City and argues that the Association's proposal would substantially change the manner in which acting pay is now being provided. According to the City, the wording of the acting pay proposal is sufficiently confusing that its inclusion in the agreement would necessarily spawn grievances and possibly arbitrations to determine its meaning. In this regard, the City focuses on the apparent requirement that the firefighter be "assigned" and the allegedly conflicting testimony of the Union's president with regard to the application of said concept in the department. The City also points to the reference to "classification or rank" in relation to the fact that equipment operators and paramedics are not a separate classification or rank. Similarly, the City points to the reference to "salary or premium" and notes that premiums are only payable to persons who regularly work as equipment operators or paramedics. In fact, according to the City, disputes will necessarily arise whenever an employee may be called upon to perform work performed by officers or equipment operators and paramedics, even if the assignment is of short or emergency duration. To adopt the proposal would impinge upon the City's ability to assign work reasonably and would leave so many unanswered questions that disputes would inevitably arise and should be rejected for those reasons, in the City's view. This is particularly true, it is argued, because the Association maintains that it has no objection to continuing the acting pay process currently followed by the City if that is what the City desires to do.

LIFE INSURANCE

In its brief, the City reviews the history of the life insurance provision, including the provision calling for the additional 25% increase in benefits and argues that the City's proposed change is an attempt to stabilize the potentially increased costs caused by the removal of the school group from coverage. The City points out that all represented groups have agreed to the change after the City was successful in finding an alternative carrier who would carry the modified group at 100% of salary with no increase in premiums. According to the City, its survey disclosed that no other comparable community, including many of those claimed comparable by the Union, provided life insurance coverage at 125% of salary. With regard to the evidence indicating that Wauwatosa provides such coverage up to 120%, the City points out that there is a salary cap at \$20,000 and also points out that the Association was unable to provide any evidence concerning any other claimed comparable which offered insurance coverage in excess of 100% of salary. For this reason, and because the Association has offered no evidence to support its position that it should be treated differently than other City employees, the City contends that its offer in this regard should be found to be more reasonable. The City acknowledges that it has the burden of establishing the need for a change in the status quo and contends that it has met that burden in this case.

HEALTH INSURANCE

According to the City, its proposal to pay all health insurance costs for 1983 and 1984 but provide a contract dollar reference in the insurance provision would serve the purpose making employees more cognizant of the ever increasing cost of health insurance protection, would place firefighters on an equal footing with other represented employees of the City and would make future health insurance increases a legitimate bargaining issue instead of an automatic "roll up." In this connection, the City points out that the increased cost of insurance from 1982 to 1984 was over \$72,000.00, or an increase of more than 32% in the two year period in question. This increased cost was equal to nearly a quarter of the wage increase at issue in this case, according to the City. The City also points out that all other represented groups in the City have accepted the proposal to include dollar figures in the agreements and argues that the Association's refusal to do so is unreasonable. Such a provision not only causes employees to be more cognizant of the increasing costs of health insurance but will aid in seeking their cooperation in attempting to control spiraling insurance costs. The Association's claim that the City's proposal will require that it bargain insurance increases every year, while not a certainty, further draws attention to the City's argument in this regard. According to the City, if the only focus is on wage increases, there is less likelihood of a meeting of the minds and voluntary settlement in negotiations.

In conclusion, the City argues that its offer on each item in dispute is more reasonable than that proposed by the Association and that consequently its final offer should be selected "decisively" as the more reasonable offer.

In its reply brief, the City acknowledges the existence of a mathematical error contained in one of its exhibits and its initial brief but argues that said error merely reduces but fails to eliminate the unreasonable aspect of the Association's wage proposal. It also argues that the Association's reliance upon comparisons between firefighter wages, converted to an hourly rate, and the hourly rates for police and building inspectors, is unpersuasive because of the great differences in the work schedules of the employees in question and the large percentage of time during which firefighters are inactive except for emergency responses. Contrary to the Association's contention, the City argues that the record does establish that Waukesha is a "free standing community," according to the City. On the other hand, certain arguments contained in the Association's brief, such as those relating to where aldermen may work, are without support in the record. While the record supports the finding that the fire chief believes the City's department is "more efficient" it does not support a finding that the department provides more services than other communities. The record also demonstrates that employees who perform additional services in Waukesha receive premiums for such work. Also, it contends that the record does not support a finding that the City borrowed money to purchase a school but does support a finding that the City borrowed money to cover operating expenses.

Also in its reply brief, the City the following arguments in relation to the other issues:

1. The City could attempt to negotiate a man back to work at straight time rates to cover the absences caused by the additional holiday but it has never done so in the past and even if it did it would still cause the holiday to increase the City's costs to double time as opposed to double time and one-half.

2. While it is true that the City hired a number of additional firefighters in order to go from a two station to a four station organization, the record also establishes that it hired three additional firefighters to cover the additional time off granted under the Iams award.

3. By failing to submit language of its own, the City did not acquiesce to the Association's proposal on acting pay, it merely withdrew its objection to the non-mandatory nature of that proposal after it was reworded.

4. The Association's claim that the current language on health insurance is "longstanding" is inaccurate since that language was first included in the parties' agreement as a result of the Iams award. In that same award Iams found that the City's proposal to continue insurance cap language was more reasonable than the Association's proposal but nevertheless awarded the Association's position as part of the total package.

ASSOCIATION'S POSITION

In its initial arguments, presented along with its evidence at the hearing, the Association first reviews certain background information concerning the City of Waukesha and its Fire Department. Included in that data is information concerning departmental personnel and their deployment at the four stations as well as information concerning the organization of City government, population figures, employment figures, and tax basis figures. Also, as part of this background, the Association prepared a detailed summary of the history of these protracted negotiations, emphasizing its perspective as to the cause of the protracted nature of those negotiations.

Like the City in its brief, the Association has set out its arguments in relation to each of the issues in dispute. The first issue in dispute relates to wages.

WAGES

According to the Association, firefighters in the City of Waukesha continue to provide more of a service than many neighboring fire departments but are not compensated accordingly. According to the Association, its claim that firefighters in the City possess superior abilities through training and acquired skills is un rebutted. In support of that claim, the Association reviews the evidence to the effect that the City has expanded, that the department has increased from two to four houses, and the fact that in addition to the one paramedic unit and one ambulance, nearly all of the firefighters have been given emergency medical technician training so as to enable the City to respond initially to a call for medical assistance within four minutes, anywhere within the City boundaries. The Association also points out that much vehicle maintenance is performed by the bargaining unit, which does not include a master mechanic, and that most of the training is done by other members of the department. Further, it points out that firefighters have recently been called upon to perform inspections of three family dwellings and that the savings to date have amounted to \$13,600.00. Finally, based on the number of alarms answered the Association argues that it is a very busy department, second only to Wauwatosa and West Allis in the metropolitan area.

According to statewide data relied upon by the Association, the department ranks sixteenth out of twenty-one in terms of manpower and ranks last in that same group in terms of operating expenditures per capita. While this reflects favorably

on the administration of the department, it also supports the Association's contention that cost savings are being achieved through salary inequities.

In support of its claim of salary inequities, the Association relies upon the comparable groups identified by Arbitrator Iams in the arbitration award involving the 1979-1980 agreement. Arbitrator Iams identified Greenfield, Brookfield, Wauwatosa, and West Allis as the four primary comparables for purposes of salary and holidays and, the Association argues, nothing has transpired since that time to suggest that a different comparable grouping should be utilized. Within these comparables the Association argues that Waukesha is most comparable to West Allis and Wauwatosa based on population and number of fire stations. In addition, West Allis, Wauwatosa, and Brookfield are parties to a mutual pact with Waukesha. Construction contracts are based upon wage scales in the Milwaukee and Waukesha County area and officials of the City look to Brookfield, West Allis, Wauwatosa, and Greenfield when seeking to ascertain comparable salaries for elected officials and others, according to the Association.

A review of the City in comparison to the enumerated comparables demonstrate that, even after winning the arbitration award for 1979 and 1980, the Waukesha firefighter still remained \$32.00 below the average of the comparables in 1979 and \$61.00 behind the comparables in 1980. After voluntarily settling for 1981 and 1982, this "deficiency" grew to the amount of \$92.00 per month, according to the Association. It was because of this growing disparity that the Association determined that it was necessary to put together a proposal which would provide an additional "lift" in these negotiations. In effect, the Association claims that its proposal will allow the City to become comparable "without even having to pay for it."

In support of the reasonableness of its proposal, the Association also points out that even if its offer is selected, it will remain approximately \$50.00 below average for 1983 but will return to approximately \$19.00 below average in 1984. If the City's proposal is accepted the difference per month will increase to \$100.00 behind in 1983, which translates to \$1,200.00 per year.

When the primary group and secondary group of comparables are combined for analysis purposes it is disclosed that the Waukesha firefighter is not only behind the larger communities providing the same service, but is also behind the average of all communities, including the small departments in the greater metropolitan area. Firefighters were \$40.00 behind the average of all departments in 1981, \$81.00 behind the average of all departments in 1982, and will still be \$23.00 below the average of all departments for 1983, if the Association's offer is accepted. By 1984, the department will still be \$19.00 behind the average but will be in a position from which it can be said to be "competitive," according to the Association. On the other hand, the use of a percentage raise in connection with a low based salary will result in the department falling further behind if the other departments are also receiving the same percentage.

In terms of rank, the department ranks eleven out of thirteen compared for 1981, fourteen out of fourteen compared for 1982, eleven out of fourteen compared for 1983, and four out of seven compared for 1984. These rank comparisons clearly support the Association's proposal, it is argued.

Because of the structure of its offer, the Association argues that the difference in the first year amounts to \$66.00 per firefighter or \$5.50 per month over the one year period. It should be remembered, according to the Association, that the comparisons are all based on the top rate earned in 1983, which will be earned for only a short period during the year. Further, since the Association's holiday proposal would not take effect until January 1, 1984, it is accurate to say that the Association is not seeking any other improvements, including fringe benefits, for 1983 other than the salary lift requested. In order to reach a "plateau of some respectability with regard to his financial standing," the firefighter in Waukesha is giving up hard cash and permitting the City "to have a comparable wage base without paying for it," according to the Association.

As to 1984, the Association points out that there is no dispute as to the appropriate percentage wage increases to be granted. The only additional benefit sought by the Association is one additional holiday.

The Association also compares the five year salary of firefighters with the five year salary of patrolmen for purposes of analyzing the relationship which has existed between those two positions over the years. According to the Association's analysis, the relationship has "fluttered back and forth" over a 12 year period and back to a point of being "even" as a result of an additional 2% lift granted to patrolmen in 1982. The Association states that it does not begrudge the patrolmen this additional increase, which was deserved, but argues that the evidence discloses that the two departments do not necessarily historically get paid the same.

According to the Association, its numbers have been given careful consideration of whether it should reenter the "dreaded" arbitration process in order to achieve the desired results and have concluded that they should do so. They agreed to waive the opportunity to secure other benefits in the hope of achieving the financial recognition sought and have patiently continued the performance of their duties pending the outcome of this proceeding.

HOLIDAYS

According to the Association, one additional holiday for 1984 is the only fringe benefit that it is seeking as a part of these proceedings. On the other hand, the City has placed a number of "take aways" into issue. Acting pay, according to the Association, is not a fringe benefit and its proposal merely constitutes a request to incorporate practice into the agreement.

According to the Association, the decision to limit the requested fringe benefits in this proceeding was made in order not to jeopardize the Association's position on wages. However, because benefits are extremely difficult to secure voluntarily, the Association determined to seek this additional benefit through the arbitration proceedings which were necessary for wages.

According to the Association, the evidence illustrates that the existing holiday provision is grossly inadequate when compared to other communities in the Milwaukee area. Because of the unique work schedule of firefighters, it is inevitable that firefighters will work on all or part of a holiday. This results in firefighters being required to forego arrangements such as having Thanksgiving dinner with their family. Furthermore, firefighters work a normal work week of 56 hours rather

than 37 to 40 hours. Nevertheless, one holiday for a firefighter uses up 24 hours of off time not simply 8 hours, as in the case of other employees. In practice, the holiday time granted firefighting personnel is comingled with whatever additional off time is available and used to take time off from regularly scheduled 24 hour shifts.

The Association notes that the other contracts analyzed in its exhibits sometimes make reference to "11 days off" such as in Greenfield but in fact grant time off in 24 hour increments equaling 264 hours of off time in Greenfield. If an 8 hour employee were granted that many hours of off time he obviously would be free to take off for many days in excess of 11. In Waukesha, where firefighters receive 120 hours of compensatory time off, they in effect receive 5 days of holiday time off. For this reason the Association's exhibits, while based on actual contract language, have converted all of the comparable provisions to hours of off time and hours of pay in addition to off time for holiday compensation.

A review of the exhibits provided demonstrates that the major comparables provide substantially greater holiday benefits than does the City, according to the Association. If the 144 hours requested is granted, firefighters in Waukesha will still remain 198 hours behind West Allis, 120 hours behind Greenfield, and 36 hours behind Wauwatosa in 1984, according to the Association's evidence. For these reasons and because it is the only fringe benefit sought for a two year agreement, the Association argues that its position on this issue should be favored.

ACTING PAY

In support of its acting pay proposal, the Association first reviews the paramilitary structure of the Fire Department and the two basic ways available to insure a ranking officer is present on the first piece of equipment to arrive at a fire scene and that an officer of the desired rank is present at the scene if more than one piece of equipment is called out. In the past, the City has utilized the practice of calling back a ranking officer, if necessary, to insure the presence of an officer of the desired rank for the desired responsibility. The decision in 1932 to utilize the rank of "acting lieutenant," which is an example of the other alternative, has been followed in other departments, according to the Association. According to the Association, Wauwatosa, Greenfield, and West Allis have all entered into contractual agreements providing for an additional salary adjustment when an employee is required to act in a rank or a capacity above his own and generally that rate has reflected the difference between the employee's rate and the entry level pay scale for the other rank. Other municipalities, including Brown Deer, Cudahy, Glendale, Oak Creek, Shorewood, South Milwaukee, West Milwaukee, and Whitefish Bay, have also done so, according to the Association.

The Association acknowledges that when it was approached in November 1982 it indicated its willingness to accept the suggested amount of \$18.50 per tour of duty as compensation for a firefighter acting as a lieutenant, since that was the actual cash difference between the two ranks. This agreement was to be temporary, according to the Association, and produced a substantial savings for the City. In the meantime, the Association sought to negotiate with the City concerning an acting pay provision for the agreement. It was in this context,

according to the Association, that the City Council approved an extension of the acting pay practice in January 1983 and later, by motion, in September 1983. During the negotiations, and after the petition in this proceeding had been filed, the City challenged the form of the Association's proposal at that time as constituting an interference with its right to determine who will be paid for performing the work in question. When the Association modified its proposal, the City had an opportunity to make a proposal on acting pay but has failed to do so.

According to the Association, its proposal asks for nothing unique and simply requests that if the City chooses to use actors in the manner they are utilized by other municipalities under similar circumstances, they should receive the straight time pay for the person they are replacing. No employee will serve as an actor unless the City determines that it wishes to utilize his services in that capacity. According to the Association, its proposal is easy to comprehend and plays no favorites within the bargaining unit. Even though the status quo is not clearly established in this instance, the Association contends that the City does not, in all likelihood, wish to revert to the previous arrangement which helped deplete its overtime budget. In summary, the Union argues that its proposal is fair, reasonable, and just and preserves management's power to determine when, if at all, it will utilize the provision. This is certainly more reasonable and sensible than the City's position which appears to be to leave the problem unresolved, according to the Association.

LIFE INSURANCE

At the hearing, the Association took the position that the granting of the additional 25% of life insurance coverage was extended to the Police Department in 1977 and not extended to the Fire Department until 1979. (A review of the Iams award reflects her belief that the status quo at that time was 100% for all departments, based on the record before her. Based upon the record before the undersigned, it would appear that the increase to 125% may have preceded the inclusion of such language in either the police or firefighters' agreements.) In either event, the Association argues that the City's proposal in this regard is a "take away" proposal.

The Association emphasizes the importance of life insurance benefits to uniformed personnel and argues that the limited wage scales paid to firefighting personnel leaves little in the way of discretionary income for the purchase of additional insurance. The Association acknowledges that the police apparently agreed to eliminate the 25% additional coverage in the recent negotiations but points to the delay in the execution of that agreement and also to the continuation of the 125% coverage for management and mid management employees, embodied in an ordinance dated September 1983.

The Association points out that life insurance is a benefit which is not subject to "abuse" and points to the decision of another arbitrator in support of its contention that the burden is on the employer to establish the proof necessary to justify this "take away" proposal. Consequently, it is argued, the City's proposal on life insurance, like its proposal on health insurance, are unreasonable and have directly and seriously handicapped the possibilities of securing a peaceful labor agreement in this case.

HEALTH INSURANCE

According to the Association, on the issue of health insurance, it merely asks for maintenance of the status quo. While the City does not presently seek to decrease either coverage or the amount of contribution for 1983 or 1984, it does seek to place a limit on the dollar amount that it will contribute. It is this aspect which should be contrasted with the "fully paid" coverage which has previously existed, according to the Association.

According to the Association, the fully paid language currently in the agreement is reasonable and constitutes one of the few benefits which Waukesha firefighters share with neighboring municipalities, within its group of comparables. Thus, Wauwatosa, West Allis, Brookfield, and Greenfield each provide for "fully paid" coverage without regard to dollar amount, according to the Association. In fact, some of those municipalities and others within the Association's comparables also provide paid dental insurance coverage and full or partial health insurance coverage for retirees, neither of which is provided by the Employer.

The Association points out that the City offers no compromise or suggested tradeoff in exchange for its proposal in this regard. According to the Association, its members would be at the mercy of the City for purposes of determining the premium for subsequent years. Given a choice, the City would opt for the payment of greater premiums, to be paid by the employee, to protect itself against claims.

The Association also argues that while the language offered by the City may appear to be unambiguous, it could result in disputes as to whether the dollar amounts for 1984 will be the amounts which will be applicable in 1985, pending negotiations. This failure to clearly indicate whether the additional sums contributed in 1984 will become part of the agreed to premiums could result in arbitration in 1985 and, at a minimum, could disrupt peaceful negotiations. "Bad language" of this type should not be incorporated into a labor agreement, at least without a showing of need for the change, according to the Association.

The Association's strong preference for the existing language is not hypothetical or imaginary, it is argued. During the last arbitration dispute, over the terms of the 1979-1980 agreement, employees were required to contribute the difference between the 1978 premiums and the increases in 1979, 1980, and the first six months of 1981, pending the outcome of that proceeding. This was true in spite of the fact that the City had agreed during the negotiations to pay the entire 1979 and 1980 premiums and the matter was not a part of the dispute in that case. This practice creates a severe hardship and causes a clear disadvantage in the bargaining position of firefighters, according to the Association. Thus, the Association anticipates that if the City's provision is awarded, the negotiations for 1985 will be similar to the negotiations for 1979 and 1980 in this regard.

In response to arguments raised in the City's brief, the Association makes a number of additional points. First, the Association points to an error in the City's brief with regard to the City's calculation of the "lift" provided by the Association's offer. That error, which the City acknowledged

in a subsequent reply, is corrected in the description of the City's position above. With regard to the City's claim that other bargaining units have accepted the same package offered to the Association, the Association contends that the "total packages" accepted by the various City units has never been fully disclosed. Further, the Association contends that a review of the City's own exhibit with regard to internal comparisons, demonstrates that its conclusion is not justified.

For example, according to the Association, building inspectors received more in 1982 than did firefighters, whose responsibilities include the inspection of buildings but also include the saving of lives and property. Also, the City's exhibit shows that building inspectors settled for a 5% increase, sewerage people and streets and parks people settled for 6.575%, and that incinerator people settled for 5.75%. Also, while the testimony at the hearing was intended to suggest that non-union people were headed for a probable zero percent increase, the Association suggests that such was not likely to be the outcome.^{2/} According to the Association, these various results suggest that the City has simply been attempting to negotiate the best agreements it can reach with the various unions. Also, in reply to City arguments, the Association contends that there has never been a relationship between police and firefighter salaries and that if such a relationship existed it ought to be based upon hourly rates and not monthly salaries. In response to the City's claim that it has always paid its firefighters less than the Association's primary comparables, the Association points to the situation in Wauwatosa where the differential has grown over the years from a differential of \$2.00 more for the Waukesha firefighter in 1979 to \$130.00 less for the Waukesha firefighter in 1984, if the Association's proposal is rejected. Further, the premiums received and the longevity pay received in Wauwatosa is not unique, according to the Association.

Also, the Association contends that if the proposal to convert to a bi-weekly pay calculation will cost an additional \$12,000.00, then the additional compensation is deserved in order to maintain the so-called equity between the pay scales for firefighters and patrolmen. While the percentage increases offered by the City herein may be "comparable" they will not achieve the additional lift necessary to achieve true comparability in terms of salary level, according to the Association.

With regard to the City's arguments concerning the state of its financial condition, the Association points out that it was agreed at the commencement of these proceedings and during the proceedings, that the City's ability to pay was not an issue. On the other hand, an analysis of the record will support a finding that the City borrowed money, not for the purpose of meeting operating expenditures, but for the purpose of buying a school building. Further, according to the Association, while the various departments were asked to cut their budgets, not all departments in fact did so.

In response to the claim that the City is able to recruit at current salary levels, the Association points out that an individual with no job is understandably willing to work for

^{2/} Subsequent to the conclusion of the briefing schedule, the Association submitted an exhibit purporting to be a City ordinance dealing with increases allegedly granted such personnel. Because there was no prior agreement on such post argument submissions of evidence, this evidence, which is not deemed critical to the resolution of this dispute, has not been considered by the undersigned.

existing salary levels, particularly when it is remembered that he brings no experience or skills to the job.

The Association makes the following additional points with regard to the other issues:

1. The Association seeks additional holiday compensatory time off and not holiday pay and, based on the uniqueness of the work week and the work schedule, has justified its proposal, especially when its proposal is compared to other employees working in similar jobs in other communities.

2. The Association's holiday proposal does not require the payment of additional premium to the employees in question and the record establishes that the City could absorb the additional time off without call-backs by changing its minimum manning practices. Also, the City could seek to negotiate straight time pay with those employees willing to work on their holidays.

3. The fact that additional time off is acquired by employees as the work force matures is a problem which is not unique to firefighting and firefighters, who are prohibited from striking, must rely upon arbitration to acquire comparable rights, such as those sought in this case.

4. Three additional firefighters were not hired to cover the additional vacation benefits granted by Iams; instead, they were hired to help man the two additional stations.

5. The Association has never taken the position that the City should hire an additional three firefighters to cover its vacation pay proposal and has argued instead that the City has other options available to it.

6. Contrary to the City's position, the Association does not agree with the City's current handling of the acting pay issue since it is only choosing to pay acting pay to acting lieutenants. The Association seeks acting pay for all bargaining unit employees who are called upon to perform work of a higher position.

7. Contrary to the City's contention, the proposal, as worded, is not confusing. The words utilized are intended to convey the meaning that employees who are called upon to perform the work of a higher paying classification rank or activity should be paid accordingly. If the City had difficulty with the wording of the Association's proposal, it should have negotiated with regard to same.

8. The City's attempts to substantiate its "take away" proposal with regard to life insurance is unconvincing and was unsupported by any explanation prior to the hearing.

9. The City inconsistently relies upon the Milwaukee area comparables in support of its life insurance proposal.

10. The protracted nature of these proceedings help substantiate the Association's position that the City's health insurance proposal is unreasonable.

DISCUSSION

WAGES

In the view of the undersigned, the choice between the final offers in this case is made particularly difficult by

reason of the fact that the parties are not in agreement as to the appropriate external comparables or the relative importance of internal comparables, and in particular, the importance which should be attached to the City's settlement with its police bargaining unit. For this reason the question of the relative importance which should be given to the evidence on comparability will be discussed at the outset of this discussion of the wage issue.

On an issue such as the appropriate across the board wage increase which should be granted, internal comparisons (i.e., increases granted to other represented employees of the municipality) should, in the view of the undersigned, carry great weight, regardless of whether the bargaining unit consists of firefighting or law enforcement personnel (subject to the provisions of Section 111.77 of the Wisconsin Statutes) or professional, blue collar, or white collar workers (subject to the provisions of Section 111.704(cm)6. Wisconsin Statutes). Municipalities understandably strive for consistency and equity in treatment of employees. Any unexplained or unjustified deviations from an established pattern of settlements with represented groups, whether achieved through negotiations or an arbitration award, can be disruptive in terms of their negative impact upon employee morale and the municipality's collective bargaining relationship and credibility with other labor organizations. Furthermore, in some municipalities, firefighters and law enforcement personnel have a history of attaching undue importance to the notion of "parity," treating it as a measure of their respective status as perceived by the community. The fact that the concept of "parity" is often defined locally in a somewhat superficial way that makes it difficult to rationalize and the fact that it tends to ignore the uniqueness of the work performed by the two groups in question, in no way detracts from the importance such an issue can have on employee morale and stable collective bargaining, including the City's efforts to avoid the phenomenon of "leap frogging."

In this case, a careful review of the settlements reached with other represented groups establishes that the City's offer on wages is consistent with the settlement reached with its police and the bulk of its blue collar workers. However, as the Association points out, the offer is not consistent with the increases granted to all classifications of employees or all represented groups. A number of the settlements reached (and the City's offer herein) reflect an apparent willingness to utilize split increases with some classifications and groups in an apparent effort to lift the rates paid to those groups to a greater extent than the other classifications within the same represented group or in the other represented groups. Further, a review of the available data concerning the relationship between the monthly salary paid to five year patrolmen and five year firefighters, shows that, notwithstanding the 2% adjustment granted police in 1982, actual "parity"^{3/} between the police and firefighters has been the exception rather than the rule for a number of years.

The undersigned believes that the City's attempted

^{3/} The record in this case reflects that, to the extent that the concept of "parity" has been given any definition in Waukesha, the focus has been on equalizing the fifth year salary for firefighters and patrolmen, expressed as a monthly rate.

distinction between "free standing" communities and "bedroom" communities is, in general, a valid one. For this reason (and because of their relative size and proximity and participation in a mutual aid pact) the undersigned must agree that West Allis, Wauwatosa, and Greenfield, which are included on both parties' lists of proposed comparables, should be given greater weight than most of the communities included in the Association's list of secondary comparables, at least to the extent that there are differences between the two groups. However, the undersigned cannot accept the City's contention that cities such as Janesville, Oshkosh, Sheboygan, Beloit, Fond du Lac, Appleton, and Manitowoc should be included on the same list for purposes of wage comparisons. Based upon the proximity of Waukesha and the three agreed comparables to the City of Milwaukee, the other suburban communities relied upon by the Association would appear to be more comparable, at least for purposes of wage comparisons. For these reasons, the undersigned finds that the Association's proposed groups of comparables, which give some recognition to considerations inherent in the City's argument concerning "free standing status," should be accepted for purposes of external comparisons in this proceeding.

Based on the Association's comparables, there can be little doubt but that they support the Association's position on wages, at least when one focuses on the top rate for firefighters. That rate can be reached in less than five years in some of the communities compared. Nevertheless, at the end of 1982, every community compared paid a higher rate than Waukesha, according to the Association's data. Further, the difference between the average rate paid in the two groups used for comparison purposes and the rate paid by Waukesha increased from \$65.00 to \$92.00 (in the case of the primary comparables) and from \$40.00 to \$81.00 (in the case of the secondary comparables). In 1983, under the City's offer, the spread would increase to \$100.00 in the case of the primary comparables and would only drop a few dollars (to \$73.00) in the case of the secondary comparables. On the other hand, under the Association's offer, which includes an additional 2.69% lift in the first year and compounds that lift to 2.85% in the second year, the spread would drop back to \$50.00 below average in the first year and \$28.00 below average in the second year, when compared to the primary group. When compared to the secondary group, the Association's offer would reduce the below average amount to \$23.00 in the first year. Data with regard to settlements for the second year in the secondary group is insufficient to provide any meaningful comparisons.

The City argues, in part, that it has always been behind the other cities in question, when the top rate for firefighters has been compared. Available data tends to confirm this fact. However, the Association's data also shows that the rates paid by the City in 1979 and 1980 were almost identical to the rates in Wauwatosa in those years and that the spread between the City's rate and the average rate paid by the primary group has tended to increase over the years from a low of \$32.00 in 1979 to what would be a high of \$100.00 in 1983, under the City's offer.

The City also argued that its offer is quite reasonable in comparison to the Association's offer, when they are compared on the basis of dollar increases or percentage increases. However, as the Association points out, those comparisons do not give any consideration to the fact that the City's salary for firefighters is already lower than the existing salary figures to which those percentages and dollars are to be added.

Both parties' offers would appear to be reasonable in relation to the cost of living criterion. The City argues that its offer should be preferred on this basis and because of the evidence concerning austerity actions it has undertaken in the last few years due to the general economic climate that has prevailed in Waukesha and the greater Milwaukee area. However, as the Association points out, the other communities in question are all located in the same metropolitan area and have managed to maintain the salary levels in question. Further, the evidence of record suggests that Waukesha has experienced some improvement in its economic climate and the Association has structured its offer in a way that substantially cushions its impact, at least in the first year of the agreement.

For these reasons and based upon the above discussion of the issues and arguments, the undersigned believes that the Association's salary offer should be preferred under the statutory criteria.

HOLIDAYS

The Association seeks to justify its proposal to increase the number of compensatory hours off in lieu of holidays on the basis of essentially two arguments. First, it points out that its proposal to increase the number of such hours constitutes the only improvement in fringe benefits that it is seeking in connection with its two-year proposal. While this argument has some merit, it must be remembered that the Association also seeks, in this same proceeding, to accomplish a rather sizeable lift in wage rates during the same two-year period in question. Therefore, the undersigned does not believe that this proposal can be supported in addition to the Association's wage proposal and its expectation that there will be no change in the health insurance pick up, absent compelling evidence that it is justified.

The Association's second basic argument in support of this proposal is to the effect that it is supported by comparisons to other firefighting personnel who work the same unique work schedule. However, a careful review of the comparable data supplied by the Association shows that there is a rather wide variation in the practice of other departments. Further, the Association has supplied no information with regard to the practice in granting vacation time off in those same departments.

In Greenfield firefighters apparently receive a total of 264 hours of compensatory time off in lieu of holidays. As noted above, the record does not contain any evidence with regard to the amount of vacation time granted firefighters in Greenfield or how that time relates to the holiday time off provided. If it is assumed for purposes of analysis, that the work schedule and vacation schedule in Greenfield is similar to that in Waukesha, it is clear that such employees enjoy an amount of time off that substantially exceeds the amount of time off enjoyed by Waukesha firefighters. With 264 hours of holiday time, firefighters in Greenfield could be excused from working for a total of 11 out of the 121 or 122 shifts scheduled in a year and could thus be off for nearly three additional work cycles, in addition to the number of work cycles granted off for vacation purposes.

At the other extreme, Brookfield grants firefighters 120 hours of pay (or one-half pay for 10 "holidays") in lieu of holiday time off. Other departments have compensation schemes which include substantial amounts of time off, generally in excess of Waukesha's 120 hours; or a combination of time off and compensation, which would in total exceed

Waukesha's practice or the practice in Brookfield. Taken as a whole, this data tends to support the Association's position, if it is assumed that there is no relationship between holiday time and vacation time off. Nevertheless, the undersigned has trouble with the Association's proposal for at least three additional reasons.

First, it is undeniable that there are substantial differences between the hours worked and the work schedule of firefighters and other municipal employees. However, other employees of the City generally receive 84 hours of holiday time off. Furthermore, firefighters are not the only employee group who are scheduled to work on holidays. If appropriate consideration is given to the basic 56-hour work week worked by firefighters (which amounts to approximately 2,912 hours per year as opposed to 2,080 per year) the number of holiday hours which one might expect firefighters to earn, on a prorata basis, would be approximately 117.6 hours. On this basis, an internal comparison would tend to support the status quo of 120 hours.

Secondly, the Association puts great emphasis upon the fact that, at 120 hours, firefighters can only take off work for a total of five shifts. However, as the City points out, it must be remembered that firefighters are only scheduled to work one out of three shifts, or three out of nine shifts in a nine day cycle. Thus, six 24-hour holidays would permit firefighters to be off work for two full work cycles. Since "weeks" of vacation in Waukesha are granted on the basis of work cycles, an eight year employee, for example, could be off work for a total of five nine-day cycles under the Association's proposal. Put differently, the same employee would only be required to work 106 or 107 of the 121 or 122 24-hour shifts scheduled in his nine-day cycle.

Finally, based upon the evidence of record, the undersigned is satisfied that the City will experience considerable difficulty in scheduling an additional 77 shifts off in the future. It is not reasonable to expect the City to ask its management personnel to absorb the necessary number of shifts to permit bargaining unit personnel to be off the required amount of time to accommodate the Union's proposal and it would appear inevitable that the City's overtime costs will increase, if it does not reduce manning or hire firefighters to absorb this time off and the increasing time off caused by the existing vacation schedule.

For the above and foregoing reasons the undersigned concludes that the Association's proposal on holidays ought to be rejected as less reasonable than the City's proposal to continue the status quo in that regard.

ACTING PAY

The apparent purpose of the Association's acting pay proposal is to require the City to pay acting pay to all bargaining unit employees who are assigned to higher ranking positions on a temporary, per shift, basis, including lieutenants who are assigned to act as captains on a given shift, provided the City makes such an assignment. Nevertheless, the wording of the Association's proposal refers to "salary or premium" and "classification or rank," thus causing ambiguity as to its intended application. This ambiguity exists because the agreement already contains specific provisions dealing with the additional compensation

to be received by qualified EMT's who are assigned to perform EMT services or ambulance services on any particular tour and "relief" operators who are assigned to cover the shift of "regular" equipment operators, and the Association does not propose to modify or terminate these provisions. Based on the events which gave rise to the Association's proposal and its "bargaining history" the undersigned is satisfied that, if it is included in the agreement, its general wording would have to be interpreted to be subservient to the previously existing specific language and that its application in practice would be limited to those situations where an employee is assigned to work in a higher rank. Thus, the ambiguity caused by the poor draftsmanship involved would not appear to be a basis for rejecting the proposal as unreasonable.

While it is possible that the application of the acting pay proposal will become a matter of dispute if the City permits or allows employees in a lower rank to perform the duties normally assigned to employees in a higher rank, without giving such employees specific directions as to whether they should undertake such assignment, that problem could be easily avoided or corrected by instituting more careful management practices. Further, the undersigned does not agree that the Association's proposal constitutes an interference with the City's right to determine who will perform certain work since it clearly reserves to management the right to make the assignment or to refrain from doing so.

On the merits of the proposal, the undersigned agrees with the Association that it is reasonable, and more reasonable than the City's proposal to leave the contract silent on the matter. The provision in question provides the means by which the City can save money by the use of actors instead of call backs but does not require that it do so. If utilized, it will provide lower ranking officers with the opportunity to fill higher ranking positions on a temporary basis and thus gain valuable, practical experience. Finally, the expectation that an employee receive the difference in pay between his regular rate for a shift and the rate of pay earned by the person whose position he is assigned to cover on a particular shift, is a reasonable one and one which is commonly included in collective bargaining agreements. The reasonableness of such expectation is in part reflected by the City's action in doing so since 1982, on those occasions where it has elected to utilize actors instead of call backs.

LIFE INSURANCE

The City's proposal to reduce the amount of life insurance provided to bargaining unit employees by eliminating the add on of 25% now specifically referred to in the agreement, is properly characterized as a "take away" proposal, in the view of the undersigned. Consequently, the undersigned must agree with the Association that the City has the burden of establishing strong justification in support of such a proposal.

While the City, in effect, is claiming hardship caused by the projected increase in premiums, the evidence discloses that the City has in fact been successful in obtaining coverage from an alternative carrier, based on a modified group, for approximately the same cost as it was previously incurring.

The City also argues that the coverage provided has been greater than that provided by other comparable departments. In fact, the available evidence does disclose that the amount of life insurance provided by the City has apparently been greater than that which is provided in other comparable

departments. The City's evidence regarding the results of its survey of other cities stands un rebutted to that effect, except in the case of Wauwatosa. In Wauwatosa, employees apparently have an option to obtain fully paid life insurance coverage in an amount equal to 120% of salary plus longevity. If they elect to take coverage in the amount of 100%, up to a maximum of \$20,000, they may also obtain limited spousal and dependent coverage. On the other hand, the Association points out that other comparable departments also have other insurance benefits not currently provided by the City, such as dental coverage.

The strongest argument advanced by the City in support of its proposal to eliminate the 25% add on coverage agreed to, consists of the voluntary agreements it has reached with other bargaining units, including the bargaining unit of police. However, as the Association points out, the evidence in this proceeding does not disclose what other possible trade-offs, if any, may have been involved in those negotiations. Because the undersigned believes that the burden is upon the City to justify its proposal and because the City has advanced no compelling reason why the Association should accept the reduction of this benefit, which is of obvious great importance to firefighting personnel due to the nature of the work performed, the undersigned concludes that the Association's proposal to continue the benefit at current levels is more reasonable under the statutory criteria.

HEALTH INSURANCE

Before discussing the merits of the parties' respective arguments, it is helpful in relation to this issue, to review the history of the health insurance provision. The provision in the expired agreement, which requires full payment of health insurance premiums, was voluntarily included in the 1981-1982 agreement after the Iams award. A review of the Iams award is necessary for purposes of determining its earlier history.

A review of the Iams award discloses that in the negotiations for the 1979-1980 Collective Bargaining Agreement, it was the Association which sought to change the status quo with regard to health insurance language. The Association sought to change the language of the agreement to require the City to provide "fully paid" coverage. According to the arbitrator, the agreement which was in effect in 1978 already provided for a sharing of the cost of health insurance premium increases but apparently contained dollar amounts which were equal to the 1978 premiums. In those negotiations the City proposed language which would require that in future years employees would be required to contribute an amount equal to one-half of any increases in premiums or 10% of the total premiums, whichever was of less cost to the employee.

Arbitrator Iams found that since the dollar amounts offered by the City in that proceeding in fact provided full coverage of the premium costs for 1979 and 1980, the sole issue to be decided was the reasonableness of the future cost sharing provision. Based upon the fact that a similar provision was included in agreements and proposals with other City units and the fact that the police unit had achieved "fully paid" language through an arbitrator's award rather than negotiations, the arbitrator indicated a preference for the City's proposal on the health insurance language issue.

Based upon this review, the City would appear to be correct in its contention that the provision of the agreement requiring fully paid health insurance coverage is not of longstanding duration and was included in the agreement through the Iams award, notwithstanding her preference for the City's position. On the other hand, it is also true that, in fact, the City has paid the full cost of health insurance for a number of years. The City's proposal would continue that practice for the duration of the current agreement but would also require the Association to make a proposal with regard to insurance premiums for 1985, unless the Association was of the opinion that the dollar amounts provided were sufficient to cover 1985 premiums. Such an eventuality is obviously unlikely, based on recent experience. The undersigned finds no fault with the Employer's objective in this regard.

The City's proposal would also require that, if a timely settlement is not reached in negotiations, bargaining unit employees herein will be required to contribute the difference in premiums which would cause a reduction in net take home pay. Also, based on recent experience, the likelihood of this occurring is quite high, as the Association points out. Further, the Association's claim, set out in its reply brief, that this difference could be interpreted to be the difference between the 1983 premiums and the 1985 premiums has not been disputed by the City.

The undersigned finds some virtue to the Employer's claim that employees ought to be required to recognize in bargaining that the Employer's cost of health insurance and other fringe benefits are a part of the total compensation provided for services rendered. Further, as an abstract proposition, pressures placed on both parties to reach a timely, voluntary settlement probably should be encouraged rather than discouraged. However, for a number of reasons, the undersigned cannot support the City's proposal on health insurance in this case.

First of all, unlike the proposal before Iams, the proposal here does not include any limit on the increases which may be required to be absorbed by employees, at least pending negotiations. The full burden of such increases falls squarely on the shoulders of the employees, without any "sharing." Secondly, there is no evidence that the internal comparables, which Arbitrator Iams found most persuasive, are worded identically to the proposal herein. Thirdly, the proposal, as worded, could easily be interpreted to require a level of contribution that is even more disproportionate in its impact upon employees, which interpretation the City has not denied. Finally, the external comparables clearly favor the Association's proposal. Therefore, based on the unique bargaining context of the disputed proposal between these parties, the undersigned favors the Association's proposal.

CONCLUSION

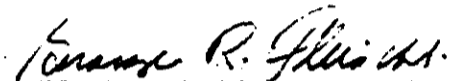
The above discussion indicates that the undersigned favors the Association's proposal on the important issue of wages. The City's proposal on holidays is favored over that of the Association and this is deemed to have a significant negative impact on an overall evaluation of the Association's final offer. However, the issue of wages is of greater consequence to the overall evaluation of the final offers and the Association's proposal on each of the three remaining issues (two of which were raised by the City), is favored.

Therefore, based on an overall evaluation of the parties' final offers under the statutory criteria, the undersigned renders the following

AWARD

The Association's final offer, submitted to the Wisconsin Employment Relations Commission, shall be included in the parties 1983-1984 Collective Bargaining Agreement, along with all of the provisions of the 1981-1982 agreement which are to be modified in accordance with the parties' stipulations or to be continued unchanged.

Dated at Madison, Wisconsin this 28th day of August, 1984.



George R. Fleischli
Arbitrator