

APR 08 1985

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

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* In the Matter of the Petition of	*	
* CITY OF RACINE	*	Case CXCI
* for Final and Binding Arbitration	*	No. 32464 MIA-807
* Between Said Petitioner and	*	Decision No. 21484-A
* INTERNATIONAL ASSOCIATION OF	*	
* FIREFIGHTERS, LOCAL 321, AFL-CIO	*	

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I. APPEARANCES

On Behalf of the City: Michael L. Roshar, Attorney at Law -
Mulcahy & Wherry, S.C.

On Behalf of the Association: Robert K. Weber, Attorney at Law -
Schwartz, Weber, Tofte & Nielsen

II. BACKGROUND

On November 18, 1983, the Employer filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to initiate final and binding arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act, with regard to an impasse existing between the parties with respect to wages, hours and conditions of employment of fire fighting personnel for the years 1984 and 1985. An investigation was conducted on January 5, 18 and February 22, 1984, by Herman Torosian, Chairman of the Wisconsin Employment Relations Commission. The investigator advised the Commission on February 24, 1984, that the parties were at impasse on the existing issues as outlined in their final offers transmitted along with said advice and that he had closed the investigation on that basis. On March 12, 1984, the Commission ordered the parties to select an arbitrator. The undersigned was selected from a list provided by the Commission. On April 25, 1984, the Commission issued its order appointing the undersigned as Arbitrator.

A hearing was scheduled in the matter originally for August 10, however was postponed and was ultimately held on September 28, 1984. The proceedings were not transcribed. The parties reserved the right to submit post-hearing briefs. They were due November 12, 1984. The Employer brief was received on November 12, 1984. The Union brief was received on November 15, 1984. However, they requested additional time to submit their wage comparison data. They also reserved the right to submit reply arguments. The Union ultimately was given, by agreement of the parties, until December 29, 1984, to submit the additional material and argument. This was filed December 28, 1984. The Employer filed a reply brief January 8, 1985. The record was closed January 17, 1985.

Based on a review of the evidence, the arguments and the criteria set forth in the relevant statute, the Arbitrator renders the following award.

III. FINAL OFFERS AND ISSUES

The Employer's offer is attached as Appendix A and the Association's final offer is attached as Appendix B. It is noted

that several proposals in the final offers were resolved by the time of the arbitration hearing. They were (1) the proposals on Article XXIX (Work Out-of-Grade), (2) the Employer's proposal on the general order for trades, and (3) the Employer's proposal on funeral leave.

Generally speaking, the remaining differences in proposals relate to (a) wages, (b) vacations, (c) educational credits, (d) the grievance procedure, and (e) interest or retroactive monies that might be due under the award. The proposals are detailed below.

A. WAGES

The Employer's final offer on wages is quoted below:

ARTICLE XXXV - COST-OF-LIVING ALLOWANCE: "Amend to provide for a wage freeze and freeze of cost-of-living adjustments for 1984.

"Fold in accumulated cost-of-living allowance in effect on December 31, 1983 effective January 1, 1984.

"A one percent (1%) across-the-board increase will be implemented January 1, 1985.

"The cost-of-living adjustment will recommence in 1985 pursuant to the following schedule.

<u>COLA Adjustment</u>		<u>Between Indexes for</u>
January 1, 1985	For the percentage change if any	Aug. 1984 - Nov. 1984
April 1, 1985	For the percentage change if any	Nov. 1984 - Feb. 1985
July 1, 1985	For the percentage change if any	Feb. 1985 - May 1985
Oct. 1, 1985	For the percentage change if any	May 1985 - Aug. 1985

"The cost-of-living adjustment for August 1985 - November 1985 will be due and payable commencing with the first pay period following December 31, 1985.

"All calculations for cost-of-living purposes shall use the August 1982 index of 292.8 as a base and shall be multiplied times the employee's January 1, 1983 base salary excluding the January 1983 COLA adjustment but including the fold."

The Association proposes that the present uncapped COLA allowance be continued throughout the life of the contract. Their proposal reads:

"Continue the uncapped cost-of-living allowance; fold the outstanding cost-of-living on the first of the year in each year of the contract."

B. CLOTHING ALLOWANCE

The Employer proposes to increase the present clothing allowance of \$220 to \$260, effective 1985.

The Association proposes to retain the present clothing allowance, but proposes to amend the present language to provide that:

"The city shall bear the cost of any change in uniforms that they require during the life of the contract."

C. VACATIONS

The Employer proposes no change in the vacation language.

The Association proposes that:

"The city is to remove the limitations on the number of captains allowed off on vacation at any given time."

D. EDUCATIONAL CREDITS

The Employer proposes no change in the educational benefits.

The Association proposes that:

"The city shall pay members for school credits as they are earned."

E. GRIEVANCE PROCEDURE

The Employer proposes no change in the grievance procedure language.

The Association proposes to "place a 'stay' clause in the grievance procedure" as follows:

"The filing of any grievance pertaining to non-fire and/or non-emergency functions, shall cause a stay of the ordered activity and possible resulting disciplinary action, pending the ultimate determination of the merits of the grievance provided (ing) that the executive board of the union invokes such stay by including such in the filing of the grievance submitted to the Chief as hereinafter required. The right to grieve shall not be affected by any prior waiver of similar incidents or past practices by the party aggrieved or any other member of the Union."

F. INTEREST

Last, the Association proposes that "the city pay 8% interest on monies gained retroactive to January, 1984." The Employer has no similar proposal.

IV. ARGUMENTS OF THE PARTIES

A. The Employer

1. Wages

As background, the Employer first analyzes the cost of the respective proposals. In terms of cost, they contend that the City is offering a wage and COLA freeze for 1984 which, in fact, amounts to a 1.4% increase in wages earned in 1984 over wages earned in 1983. This is compared to the Association's proposal to continue the COLA provision for 1984 which represents a 4.0% increase in wages earned in 1984 over wages earned in 1983.

The cost in 1985, admits the Employer, is difficult to project since the Consumer Price Index statistics needed for that computation will not be available until September, 1985. However, they make projections based on the average 1984 CPI increases. Before doing so, they note that in addition to the fact that the Employer proposes a 1% across-the-board increase (whereas the Association proposes no general increase), there are differences in the method of computation of the COLA payments. Both parties use the same Consumer Price Index for the months listed on pages 46-47 of the 1982-1983 collective bargaining agreement. However, the City has

updated the employee's base salary used from January 1, 1981 to January 1, 1983. They note this change is consistent with the voluntary agreement reached with the Racine Police Department employees. The Association's offer does not update these figures.

Their projections are based on the assumption that 1985 CPI will be on the average the same as 1984 or 4.3%. Based on that assumption, the City's offer represents a 3.8% increase in actual earnings in 1985 over 1984; and a 5.5% lift in wages at year-end 1985 over year-end 1984. The Association's offer represents a 4.2% increase in both actual earnings and year-end lift for 1985.

Based on their cost analysis, the Employer asserts generally speaking that the City's wage offer for 1984 and 1985 is more reasonable than the Association's when measured against the wage settlements received by other City employees for 1984. More specifically, they argue that (1) a majority of the City's employees have accepted a wage freeze for 1984, and (2) the historical wage relationship among the Racine Protective Service employees supports the City's wage offer.

With respect to other City employees having accepted a wage freeze, the Employer notes they employ 952 people, 776 of whom are organized. They point out that 60% of the employees voluntarily accepted a 0% increase for 1984. Of this 60%, 2/3 are organized and 1/3 non-organized and include the large and represented police and DPW units. Thus, they argue those voluntary settlements at a level identical to the City's final offer here should carry great weight in these proceedings, noting that if the City's final offer prevails in this case, 76% of the City's employees will receive a wage freeze in 1984.

With respect to the remaining 24% of the City's employees, they note they received increases approximating 3.5% for 1984 as the second year of 2-year agreements. Moreover, two of these units, the Public Health Nurses and the Crossing Guards, received their increases through arbitration proceedings which were held at a time when only 20% of the City's employees (Local 2239, Wastewater and Waterworks) had already settled for 1984 and no clear internal settlement pattern existed.

It is clear to the Employer that the prevailing internal pattern among the City's employees is a wage freeze in 1984 which clearly supports the City's identical offer to the firefighters in 1984. The adoption of the Association's proposed increase would be unfair to the other City employees and would be disruptive of the City's relationship with those employees. Not only would the Association's offer be unfair to the 561 employees who received a wage freeze, the 4.0% wage increase included in the Association's offer also exceeds and would be unfair to those 228 employees who received approximately 3.5% increases in 1984. With respect to the importance of internal comparisons, they cite Arbitrator Fleischli in City of Waukesha (Fire Department), WERC Dec. No. 21299-A and Arbitrator Weisberger in Manitowoc County (Highway Department), WERC Dec. No. 19942.

With respect to the historical relationship between Protective Service employees, they contend it is the policy of the City of Racine to treat all employees as equitably as possible, and in a manner consistent with their position within the municipal framework. They offer an exhibit in support of their argument which illustrates the historical relationship in terms of wage settlements that has been established over the past ten years between the Racine fire and police units. They note from at least 1975 through 1983, the City, the firefighters and the police, have all voluntarily agreed to the same wage increases. With respect to the instant dispute they draw attention to the fact that on April 4, 1984, the Racine police voluntarily agreed to a wage and COLA freeze for 1984 and to a 1% across-the-board plus COLA increase in 1985. This voluntary settlement is identical to the final wage offer of the City to the firefighters. This exhibit clearly

demonstrates, in the Employer's opinion, the detrimental effect that the Association's final offer would have on this historical relationship created by voluntary agreements.

The Employer's next major argument relates to the interests and welfare of the public and the current state of the local economy. In light of these factors they believe their offer is more reasonable. They present a number of exhibits detailing the wage and employment situation of private employers. This relates to wage concessions and high unemployment. The large loss of jobs (5,000 to 7,000 according to one exhibit) is evidenced in Racine's disproportionately high unemployment rate and increase in the County's welfare bill.

In view of these factors, the Employer asserts that the current state of the economy in Racine can be distinguished from that in the eight comparable municipalities. An analysis of the economic background of Racine reveals a populace less advantaged than the populace located in other comparable municipalities. As a result of these factors, Racine's population remains less able to sustain the high cost of public services. They detail the population losses, unemployment and per capita income in Racine relative to other comparable municipalities.

They next note that the City's financial position has undergone considerable change from April, 1983, when it ratified 2-year agreements which included a 1984 wage increase in three units. In this regard they direct attention to the testimony of Jerome Maller, the City's Financial Director and Treasurer. Maller testified that he began to prepare the 1984 budget in July of 1983. In August, he sent a letter to the Mayor outlining his concerns regarding the budget for the upcoming calendar year. He noted that the City of Racine would experience very little growth in revenues from state and federal sources, and that the City would experience no growth in the area of assessed value. These two areas provide the major resources for the City's appropriations. Maller testified further that salaries and fringe benefits comprise 70-71% of the City's budget; therefore, wage increases have a dramatic effect on the budgeting process.

The Employer also contends that the external wage comparisons do not support the selection of the Association's final offer over the City's offer. The City has presented evidence of the 1983 and 1984 maximum wage rates for the eight comparable fire units and for the City of Racine in Employer Exhibits 30-37. The rates contained in these exhibits reflect year-end monthly rates including COLA, if applicable. For 1984, the City's and Association's offers rank as follows:

<u>Position</u>	<u>City</u>	<u>Union</u>
Firefighter	5th of 8	4th of 8
Motor Pump Operator	5th of 8	5th of 8
Lieutenant	6th of 8	5th of 8
Captain	5th of 8	5th of 8

Based on their analysis they conclude it is apparent that there is no significant difference in the 1984 year-end ranks of the parties' final offers. Furthermore, it is also very likely that any slight difference in rank at year-end 1984 will be eliminated by the City's 1985 final offer which is greater than the Union's 1985 final offer. Unfortunately, the Employer contends, due to the lack of 1985 comparative data and the unavailability of the cost-of-living statistics, this is not possible to demonstrate at this time. They feel their wage ranking is appropriate because Racine ranks low relative to other comparable communities in per capita income, mean family income and median family income.

There are two other factors the City believes should be taken into consideration when analyzing the external wage data. First, the amount of time it takes to reach the maximum wage rates in the

comparables as compared with the amount of time it takes to reach the maximum in Racine should be considered. In Racine, a firefighter reaches the maximum rate after only two years; whereas, in the comparables, it can take as many as fifteen years to earn the maximum rate. In fact, the average amount of time to reach the maximum in the comparables is 6.5 years. Secondly, in comparing wage rates, they believe it is essential to compare the amounts of longevity paid in the comparables since this is a direct cash benefit to the firefighters. Three of the comparables (Beloit, Janesville and Milwaukee) do not even provide longevity payments to their firefighters. The longevity provision of the City of Racine far exceeds those of all of the remaining comparables, except Madison. Among the cities which have settled for 1984, the minimum annual longevity payments range from \$0 to \$120, and the maximum annual payments range from \$0 to \$480. The City of Racine firefighter will earn a minimum longevity payment of \$497 in 1984 and a maximum payment of \$1,243.

The Employer also suggests that some of the Union wage data supports the Employer's case. This data demonstrates the historical rank of the City of Racine (without COLA). In their analysis they supply some missing data and disregard Green Bay, which they do not believe to be comparable. Thus, their analysis of this exhibit reveals that in a comparison of bi-weekly (without COLA) average (not year-end) wage rates with the cities of Waukesha, Janesville, West Allis, Wauwatosa, Milwaukee, Kenosha and Madison, the rank for the City of Racine is as follows:

1976	8th
1977	8th
1978	7th
1979	8th
1980	8th
1981	8th
1982	3rd
1983	4th
1984	5th (City or Union offer)

2. Interest and Grievance Procedure

The Employer views the Union's proposal regarding these two subjects as an abuse of the mediation/arbitration process. The purpose in their view, which is supported by reference to a number of cases, is to obtain something through arbitration which could not be gained in collective bargaining.

Specifically with reference to interest, they believe the proposal is totally unreasonable because:

- (a) The City of Racine has never paid interest on retroactive wages.
- (b) The City is not aware of any comparable ever having voluntarily paid interest on retroactive wages.
- (c) In fact, the City is unaware of any city in the State of Wisconsin which has voluntarily paid interest on retroactive wages.
- (d) There is no record of interest on retroactive wages ever being awarded through the arbitration process in the State of Wisconsin.

In connection with the stay clause, they note that no other City of Racine employee unit has a clause remotely similar to the proposed language. Additionally, none of the comparable units have similar provisions, except for the City of Wauwatosa. It is significant in their opinion to note that the Wauwatosa firefighters attained this language through arbitration because the arbitrator felt that the monetary considerations should be determinative of the case and the Union's wage offer was the more reasonable. City of Wauwatosa (Fire), WERC Dec. No. 11790-B (3.74). Therefore, there are no internal or external comparables which have voluntarily agreed to such language.

3. Education Credits

The Employer first mentions that currently, the Racine firefighters receive adjustments for education credits on an incremental basis. Page 37 of the 1982-83 Agreement provides for adjustments "upon successful completion of seventeen (17), thirty-four (34) and fifty-one (51) credits and upon receipt of the Associate Degree." The Union has proposed revising this provision to pay for credits "as they are earned." They do not believe that the Union has justified the need to change from the status quo arrangement particularly since no other employee group in the City of Racine, which is eligible for education pay, receives the pay as the credits are earned. The other eligible groups (Police, Police Staff and Fire Staff) all receive adjustments on an incremental basis. With respect to the external comparables, the Employer feels it is apparent that the Racine firefighters are already receiving a benefit that half of the comparables do not even provide. The cities of Janesville, Milwaukee, Waukesha and West Allis do not provide their firefighters with any educational incentive pay (Employer Exhibit 49). The remaining four cities of Beloit, Kenosha, Madison and Wauwatosa reimburse their firefighters for education credits on an incremental basis ranging from every three credits earned to every thirty-three credits earned (Employer Exhibit 49). Therefore, neither the internal or external comparables support the Union's proposal for a change in the status quo.

4. Vacation for Captains

The current vacation provision, on page 24 of the 1982-83 Agreement, provides "A minimum of six men may be on vacation at one time and of those six, a maximum of two may be captains." The Employer contends that the current limitation is necessary for a variety of reasons. Moreover, the Union's final offer would pose several problems. They direct attention in this regard to the testimony of the Fire Chief. In short, the Chief explained that there are three platoons consisting of four captains each. Vacations are picked by seniority and captains generally have first choice because of their seniority. Without any control over the number of captains on vacation at any one time, it is conceivable that a platoon would be left without a captain during peak vacation periods. Part of the significance of this is that the captains assume the duties of the Assistant Chief whenever he is absent, and since at this time not all of the captains are trained to relieve the Assistant Chief, having all of the captains in one platoon on vacation at one time would create a significant problem.

5. Uniform Allowance

Both the City and the Union have proposed revisions to the current clothing allowance provision. The City has proposed increasing the annual clothing allowance from \$220 to \$260 in 1985. The Union's offer retains the current annual clothing allowance. In this regard, the City contends their offer is undoubtedly the more reasonable. The Union's own testimony with respect to the increasing cost of uniforms supports the City's offer to increase the clothing allowance. The Union's final offer proposes to revise the current clothing allowance provision to the effect that the City would bear the cost of any changes in the uniform. This cost to the City would be in addition to the annual clothing allowance. The Union, again, has provided no evidence supporting the need for this request. They have provided no evidence of uniform changes and the resulting cost to the firefighter. Nor has the Union provided any comparable evidence to support their offer. In fact, the comparables do not support the Union's proposal. With the exception of Wauwatosa, none of the comparable clothing provisions require the city to bear the cost of any uniform change in addition to annual clothing allowances.

B. The Union

1. Wages

The Union believes that the most important statutory factor to be considered is the "cost of living" factor. This should be given more weight than the internal comparisons. An examination of these internal comparables reveals that internal units have a wide range of bargaining histories. In view of the fact that the City has never maintained an inability to pay, the recent history of the voluntary wage agreements of the firefighters, argues the Union, compels the conclusion that the Union's offer in this particular case should be given prime consideration under Section 111.77(6)(h).

In the context of the cost-of-living factor, the Union believes their offer is most reasonable because it maintains salaries, on a one to one basis, with actual cost of living. Moreover, they note there is no improvement factor except as the monies generated are folded into the base rates to provide for limited future protection. In fact, they suggest that the firefighters, because of the COLA formula in the contract, have taken losses relative to other bargaining units. For example, one of the City's internal comparables, Local 67, by uncontradicted testimony adduced at the arbitration hearing, received a 10% across-the-board increase for 1981, 1982 and 1983. In this respect the City is asking the firefighters to make a bigger sacrifice than these units who also may have 1984 wage freezes.

They also discuss the implications in terms of cost of living of the Employer's offer. This offer would mean that the firefighters from 1981 through 1985, would have lost (accepting the City's 4.3% COLA increase figure for 1984) 2.3% overall against the cost of living for that period of time (giving the City credit for a 1% raise in 1981 and 1% in 1985). Thus, the City's offer is unreasonable in relation to the cost-of-living criterion. The City's position in this regard was specifically rejected by Local 1199, another internal unit, and Arbitrator Stanley Michelstetter, who awarded the unit a salary increase of 3.5% for 1984 (see Employer Exhibit 5). Indeed an examination of that exhibit reveals that five bargaining units received wage increases in 1984 approximating 3.5%. This compares favorably to the cost-of-living increase requested by the Firefighters' Union.

With respect to the settlement with police, they acknowledge there has been a general "parity" in wages with the police over a number of years. However, the voluntary settlement of the police should not be the dispositive issue in the immediate case. There is no joint bargaining with the departments, and the disparities between the police and other represented units are so wide that it would be unfair to tie the firefighters to that particular unit, at least, insofar as the settlement in that case was voluntary and not tried on the merits. The police certainly did not settle for a freeze based on a comparison with other represented City bargaining units. If the decision was premised on a consideration of what other comparable law enforcement units received, then the dispositive issue in the immediate case turns on what other external firefighter units have settled for or been awarded. Of the remaining employees, the non-represented are not comparable in any event, although it is interesting to note that the head of that group (Mayor Stephen Olsen) received an 8.5% increase during the 1984 austerity year, and that the City is waiting until after the November budget hearings to determine the increases due the as yet, unorganized personnel.

The Union also believes a comparison of the offers to firefighters' salaries in comparable communities supports their position. They based this on several tables they generated from Employer exhibits which show 1983 and 1984 maximum year-end salaries and the percent and dollar increases from year to year. They analyze firefighters, motor pump operators and drivers, lieutenants

and captains. Based on the tables, they arrived at several conclusions. First, the 1984 dollar increase generated by the Union's wage proposal is not out of line, while the City's proposal is inherently unreasonable at zero. Second, the Union's proposal in terms of percentage increases would rank behind Beloit, Kenosha and Waukesha in the firefighter and MPO classifications for 1984; and behind Beloit and Waukesha in the lieutenant and captain classifications for that time. Moreover, those figures are year-end figures. As of the end of the first quarter of 1984, Racine would have ranked second to last. The City's proposal would rank it dead last in every category in terms of percentage increases and dollar increases vis-à-vis its comparables regardless of the time that the comparison is made.

The Union also analyzes the 1983/1984 rank which would result under the offers. They note in December of 1983, Racine ranked fourth in terms of compensation in the firefighter category. During most of 1984, Racine ranked fifth due to the fact that its raises were generated on a quarterly basis based on COLA increases. In December of 1984, Racine would regain its fourth position rank based on the Union's proposal, or drop to fifth, if the City's offer is adopted. Moreover, the dollar spread between Racine and the lower-ranking comparables would decrease significantly under the City's proposal. In the MPO classification, Racine's relative position would drop under either offer from fourth to fifth. However, the dollar spread between Racine and the comparable which replaced Racine in fourth position (Waukesha) would total only \$13 under the Union's proposal, but \$101 under the City's offer. Lieutenants in Racine would drop from their traditional fourth position to fifth in 1984 under the Union offer. Lieutenants would be permanently reduced to sixth in rank under the City's offer. Moreover, in 1983, Racine was \$30 behind Wauwatosa, \$88 behind Milwaukee and \$99 behind West Allis in monthly wages paid to lieutenants. Under the City's offer, that spread would increase to \$123, \$164 and \$183 respectively. Indeed, in 1984, the Racine lieutenants would trail their counterparts who passed them up in Waukesha and Janesville by \$133 and \$15. Finally, both offers would place captains in fifth position at calendar end 1984, as opposed to fourth in December of 1983. The Union's offer would only slightly diminish its position in terms of the dollar difference vis-à-vis those units it trailed in 1983 and 1984, however, while the City's offer would again drastically alter that difference. Moreover, they submit that the dollar losses suffered by Racine vis-à-vis other units will be magnified again in 1985. Racine has a legitimate interest in keeping its rank, or at least, in maintaining the relative dollar spread between it and other comparable communities. The offer of the Union actually results in a loss of rank in three categories and maintenance in the fourth. The offer must be deemed more reasonable than the City's, which would result in significantly greater loss of rank and dollar spreads.

In terms of rebuttal to the Employer's economic arguments, the Union offers the following: (1) not only did the City of Racine not claim an inability to pay the increases sought by the Union--it did not prove that it took any austerity measures at all (aside from seeking freezes)--no long-term or short-term borrowing was necessary, and the directive from Finance Director Maller to Mayor Olsen was based on contingencies that did not happen--such as non-passage of the Federal Revenue Sharing Law; (2) despite slippage in the population between 1970 and the present, the experience was not unique to Racine--seven of the other nine comparables experienced the same phenomenon--all nine comparables, however, paid salary increases to their firefighter units in 1984, despite similar economic conditions; (3) the fact that 400 individuals applied for positions as firefighters at existing salary levels is offset by the increased workload of Racine firefighters in the recent past (e.g., a 10% increase in inspections during 1983--see p. 20 of the 1983 annual report), and a significant increase in the area and assignments (Regency Shopping Mall) without a corresponding increase in personnel; (4) regardless of the explanation of the

source of the funds, one million dollars plus were found in the budget and promptly earmarked for a harbor project that hasn't even been approved.

2. Interest

The Union points out justification that the public sector employment law of MERA in 111.77, inclusive, is deficient in failing to provide any penalty for an employer's delays in reaching successor agreements. Private sector employees with the option of strike remedies, traditionally reach earlier settlements. Public sector employers, however, operate without restriction after the expiration of the labor agreement. Typically, one of two financial options is exercised by the employer: (1) investment of the wage and benefit monies belonging to the employees; or (2) refusing to budget any monies for the employees until an arbitration award is issued. Also they juxtapose the cost of their interest proposal against the cost of the Employer's uniform proposal. Thus, in their opinion, while neither cost item would be added to the base wages of employees, the Union's proposal should be considered more reasonable inasmuch as it is a one-time payment, while the City's proposal would tend to be a self-perpetuating \$40 per year annual fixed cost.

3. Uniform

The Union believes their proposal would require the City to pay for cosmetic changes in the uniform now worn by members of the department in the event the Chief exercised his prerogative to change the wardrobe. The simple justification for such a provision, in their opinion, is that the City's exercise of its management rights in this area has a direct and significant cost impact on the affected employees. Union Exhibit #8 identified some of the costs involved in the purchase of firefighter gear. It is obvious that one or two necessary item replacements per year can exhaust the annual clothing allowance, whether it is \$220 or \$260. There is no justification for requiring employees to make necessary fashion expenditures. The Union's proposal would simply require the City to be as budget conscious as it is fashion conscious.

4. Grievance Procedure

The Union essentially proposes that in non-emergency situations, changes in work rules, wages, hours and other conditions of employment, be held in abeyance pending an arbitration decision on those changes that are: (1) grieved; and (2) stayed in formal action of the executive board of the Union. They assert these safeguards, in an identical clause in Wauwatosa, have not resulted in any detrimental effect on the operations of the department since 1971.

The believe the proposal is warranted because it offers the Union the opportunity to hold off imposition of those changes it officially deems most objectionable or violative of the labor agreement. Under the same theory that management must be deemed to responsibly invoke its management rights, the Union must be believed in its assertion that it will only invoke the stay clause in a responsible manner. The effect of the clause would only assure that a review of the objectionable order be made by an independent arbitrator, prior to its effectiveness. In equity, this obviates the problem of fashioning remedies for command actions which are later overturned in arbitration. It also addresses the obvious problem of the outmoded "work now - grieve later" concept in the fact of grievance arbitration delays inherent under MERA and the parties' collective bargaining agreement.

5. Vacations

The Union believes it is important to understand the background of this issue in order to properly evaluate the Union's proposal. Captains have traditionally suffered two basic inequities: out-of-grade pay restrictions and limitations on their vacation schedules. The inability to schedule vacations is particularly unfair because it is a result of being responsible for filling in for supervisors (who do have uninhibited vacation scheduling) outside of the bargaining unit. Thus, the captains suffer an inequity vis-à-vis both command supervisors and bargaining unit members in this area. No matter what, they are always restricted to having two men on vacation. This difficulty is aggravated by the fact that the Chief testified at the interest arbitration hearing that only some captains are deemed "qualified" to fill in at certain acting chief positions.

6. Educational Credits

They believe evidence adduced at the interest arbitration hearing demonstrated the significant recent increases in the enrollment costs of courses. The cost of reimbursement is a minimal item under the Union's proposal inasmuch as any firefighter who completes the increments becomes immediately entitled to the money. The City did not even introduce any evidence on the cost impact of the Union's proposal and it must be considered de minimis. They believe the change is justified because of the problems with the present system. The problem with the present system which requires 17 credit accumulations as a condition precedent to payment, is that it defeats the purpose of an incentive program -- which by its very nature, is implemented to encourage continuing education. It makes sense to keep the incentive to pursue that education even with the growing costs involved. If the course fees continue to increase at their present pace, continuing education costs will become prohibitive and the quality of the department will be affected. They also note it is important to note that the employees in question are not getting something for nothing. Unlike pension benefits or longevity payments, for example, educational benefits have to be earned by work over and above customary job performance. The Employer has control over the approval of the program and courses involved, and the employee must successfully complete the approved credit courses, in order to be paid. Other than a nominal, de minimis cost consideration, there is no justification for withholding payments. Moreover, of those comparables that provide educational incentive benefits, Kenosha restricts reimbursement on a similar basis as the City's final offer, and Beloit and Wauwatosa provide for compensation concurrent with completion of the credits in a manner similar to that proposed by the Union (see Employer Exhibit 49, Education Credit Provisions Among Comparables). It is respectfully asserted that the Union's offer is in the best interest of the public and more reasonable, sans cost evidence to the contrary, than the City's. The Union's proposal on this subject merely reflects its desires to keep up with the increased initial outlays involved in attending school.

V. DISCUSSION AND FINDINGS

The Arbitrator will proceed by analyzing each issue separately. After it is decided which offer is preferred on the individual issues vis-à-vis the various statutory criteria, the offers will be considered as a whole weighing the individual issue preferences against each other.

A. Wages

Prior to discussing the wage issue, the Arbitrator should state that for the purposes of external comparisons he found acceptable the group of employers urged by the City. They tend to

fit the parameters of comparability that arbitrators have traditionally come to accept better than those proposed by the Union. Moreover, these communities have been adopted by other arbitrators in cases with the city and other unions. For instance, see Arbitrator Zeidler in City of Racine (Police), WERC Dec. No. 15492 (5/78); by Arbitrator Christenson in City of Racine (Police), WERC Dec. No. 19560-A (12/82); and by Arbitrator Michelstetter in City of Racine (Public Health Nurses), WERC Dec. No. 20940-A (1/84). Therefore, the comparable employers will be:

1. Beloit
2. Janesville
3. Kenosha
4. Madison
5. Milwaukee
6. Waukesha
7. Wauwatosa
8. West Allis

On the issue of wages, the Union argues, generally speaking, that the cost of living criteria should be controlling. They diminish the weight to be given the internal settlements (a portion of criteria "d") and argue that the external comparisons (also part of criteria "d") support their case. Criteria d and e state:

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

(d) "Comparison of the wages, hours and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally:

1. In public employment in comparable communities.
2. In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living."

With respect to the cost-of-living criteria, there can be little doubt that this favors the Union's proposal in 1984 as the Employer proposes a freeze.

While the cost-of-living criteria favors the Union's offer in 1984, this can not be considered controlling for the overall wage issue. This is for a variety of reasons. First, there is the matter of the 1985 wage proposal which must be considered for which no cost-of-living data is available. Second, arbitrators have often held that the appropriate weight to be given the cost-of-living factor is largely influenced by the settlements in the comparables. It is stated by Arbitrator Kerkman in Merrill Area Education Association (MED/ARB-679 Dec. No. 17955):

"Consequently, the undersigned concludes that the proper measure of the amount of protection against inflation to be afforded the employees should be determined by what other comparable employers and associations have settled for who experienced the same inflationary ravages as those experienced by the employees of the instant Employer. The voluntary settlements entered into in the opinion of the undersigned create a reasonable barometer as to the weight that cost of living increases should be given in determining the outcome of an interest arbitration. The employees as a party to interest arbitration are entitled to no greater or less protection against cost of living increases than are the employees who entered into voluntary settlements." (Emphasis added)

In this case, both internal and external settlements are relevant. It is for these reasons that on balance the Arbitrator believes

more weight should be given to the internal and external settlements as opposed to the cost of living.

This brings the Arbitrator to the question of which component of factor (D), internal or external settlements, deserves more weight.

Clearly, in principle both deserve weight. A preferable offer is one which strikes the better balance between internal (even though such comparables involve dissimilar employees) and external. However, where there is a clear and strong internal pattern, arbitrators have, for good reason, especially where there is a history of such pattern bargaining, given greater weight to the internal pattern. In the case of internal comparisons between fire and police, arbitrators have given special weight to these comparative patterns where they have historically existed. A good exposition of this line of thought was expressed by Arbitrator Fleschli in Decision No. 20562-A, MIA-756, p. 20:

"The Association is correct in its claim that comparisons between law enforcement employees are generally more persuasive than comparisons to other employees. However, in this case a particularly difficult issue is presented because of the fact that all County bargaining units that have settled to date have agreed to accept a wage freeze for 1983. Added to this consideration is the fact that the Association's proposal would result in a situation where the majority of the members of the bargaining unit would be earning a higher salary than all other comparable groups, including Milwaukee police officers, in a year when all other County employees have been asked to and have agreed to accept a wage freeze."

Elsewhere, it has also been held that internal settlements deserve special weight. Arbitrator Rauch in Decision No. 12500-A, MIA-91, p. 8, stated:

"The city's proposal to retain the wage-rate relationship which has existed for many years between the employees represented by the Fire Fighters union and those represented by the Policemen's Association is, under the circumstances here involved, reasonable. In the opinion of this arbitrator, the collective bargaining process between the city of Kenosha and the bargaining agencies which represent various segments of its employees, and that process applied in other cities, must ultimately establish what constitutes an equitable relationship between the various functionaries of city government. This arbitrator recognizes that the agreements of other labor organizations with the city do not and should not govern the hopes of the Policemen's Association. However, he believes that, in performing his function in cases like this, he--as bargaining agencies, generally--must be concerned that equitable relationships are maintained between all of the employees and an employer.

"The results of the collective bargaining process with three other bargaining agencies suggest that those agencies not only acknowledged that the amount of the funds for increased wages and benefits in 1974 were limited (as here contended by the city), but also agreed with the police that the available funds should be divided as equally as possible in line with the relationship which then existed between the various classifications of city employees."

This Arbitrator, with these thoughts in mind, generally agrees with this approach. However, the internal pattern cannot be blindly applied. Where adherence to an internal pattern results in external relationships which are outside a reasonable range of compensation for similar employees in similar communities, strong consideration must be given to casting the internal pattern aside.

In this case the Employer makes a strong case that an internal pattern exists and that it should be given controlling weight. The two largest units accepted essentially what the Employer has offered. The settlements for 1984 under which some employees will receive an increase, are distinguished inasmuch as they were 2-year contracts (the last year of which was 1984). Under similar circumstances, arbitrators have been reluctant to give weight to settlements that were bargained in a non-contemporaneous environment. In addition, the Employer's case for the internal pattern is strengthened significantly by a long, historically-based relationship between settlements in the police and fire departments.

Inasmuch as the Employer has made a prima facie case for the internal pattern, the critical question becomes whether the internal pattern should give way to the external settlement pattern. As suggested above, it should if such adherence to the internal pattern would--relative to similar employees in similar communities--place the firefighters at an unreasonable wage disadvantage.

While adoption of the Union's offer is obviously more consistent with the external pattern of increases for 1984, there is no evidence that, when the Racine firefighters' total compensation is considered, that adoption of the Employer's 2-year offer will cause the employees to be outside a reasonable range of compensation for similar employees in comparable communities. Thus, the Employer's offer on wages is preferred. This conclusion was based on the following analysis.

The following tables represent the maximum year-end rates for the four benchmark positions in Racine and the comparables:

<u>Firefighters</u>	Maximum Salary <u>1983</u>	Maximum Salary <u>1984</u>
Beloit	\$1902	\$1987
Janesville	1964	2027
Kenosha	1962	2045
Madison	1903	1922
Milwaukee	2094	2161
Waukesha	2030	2152
Wauwatosa	2107	2191
West Allis	2139	2214
Average	2012	2087
Racine	+59	(City) -16 (Union) +70

<u>Motor Pump Oper- ators and Drivers</u>	Maximum Salary <u>1983</u>	Maximum Salary <u>1984</u>
Beloit	\$1980	\$2067
Janesville	2033	2098
Kenosha	1995	2078
Madison	NA	NA
Milwaukee	2156	2225
Waukesha	2091	2217
Wauwatosa	2214	2303
West Allis	2211	2289
Average	2097	2182
Racine	+19	(City) -66 (Union) +22

<u>Lieutenant</u>	Maximum Salary 1983	Maximum Salary 1984
Beloit	\$2186	\$2282
Janesville	2242	2313
Kenosha	2071	2154
Madison	2094	2115
Milwaukee	2386	2462
Waukesha	2293	2431
Wauwatosa	2328	2421
West Allis	2397	2481
Average	2249	2332
Racine	+49	(City) -34 (Union) +62

<u>Captain</u>	Maximum Salary 1983	Maximum Salary 1984
Beloit	\$2279	\$2394
Janesville	2330	2405
Kenosha	2161	2244
Madison	2303	2326
Milwaukee	2791	2881
Waukesha	2395	2539
Wauwatosa	2577	2680
Average	2405	2495
Racine	+20	(City) -70 (Union) +31

Based on these tables (taken from the Union brief) the Arbitrator concludes that even though the Racine firefighter will lose in 1984 relative to the average in 1983 under the Employer offer, their base rate still compares favorably to most other cities. For instance, the Racine firefighter's base rate in 1984 will still be more than Beloit, Janesville, Madison and Kenosha. The motor pump operator and driver's rate will still exceed all but Wauwatosa and West Allis. A somewhat similar result occurs at the lieutenant benchmark where Racine will rank in the middle of the pack; four cities will pay lieutenants more, four will pay less. With respect to captains, four cities will pay captains less and three will pay more.

The fact that the base wage under the Employer's offer will still be competitive supports the idea that the internal pattern should prevail. The fact that the Union will slip in relative base rate under the City's offer is mitigated by other compensation factors which when considered, make the Racine firefighters' total salary structure even more competitive than their base wage rates. For instance, the Racine firefighter is the recipient of a relatively healthy longevity payment program. Their longevity payments are exceeded only by Madison's and represent a significant addition to their base wage. As an example, an employee at the firefighter benchmark can receive up to \$1243 annually or approximately \$100 per month. It should also be noted that Beloit, Janesville and Milwaukee have no longevity provisions. In West Allis and Kenosha, an employee receives \$25 per month after 25 years; in Wauwatosa, an employee receives \$24 per month after 25 years. In Wauwatosa, the maximum is \$40 per month and it takes 25 years to reach that level. In Racine, the firefighter receives a 2% longevity payment after 5 years (at the firefighter benchmark this is \$497 annually or \$41 per month), 3.5% after 10 years and 5% or the maximum after 15 years.

The members of the bargaining unit also have the advantage of an educational incentive program that some comparable departments

do not. For instance, Janesville, Milwaukee, Waukesha and West Allis have no such program. This too mitigates against the base wage slippage the Racine firefighter will experience under the Employer's offer.

Another factor which puts the slippage into perspective is the fact that while employees in some cases earn less in basic wage rates, they reach the maximum rate much sooner than their counterparts.

The last factor that mitigates against the 1984 wage erosion is the fact that the Employer's 1985 wage offer exceeds that of the Union. This will tend to make up for some of this erosion.

In conclusion on the wage issue, the Employer's offer is preferred. It does weigh in the Union's favor that their offer is most consistent with the cost of living and that there will be a relative external wage erosion in 1985. This however, for reasons explained above, is outweighed by the internal settlement pattern and the fact that in spite of the erosion, the bargaining unit's total salary structure is still very competitive with the external employers.

B. Grievance Stay

The Union's proposal for a grievance stay is bothersome and ultimately raises a negative preference for the Union's offer. This negative preference arises because there is no need demonstrated for such a clause and because only one of the external comparables and none of the internal units have such a privilege. For instance, there is no evidence of broad ranging abuse of its discretion by the City so as to justify such a "stay" clause. Only Wauwatosa has such a clause. Moreover, this was included as the result of an arbitration award and was not voluntarily agreed to. It is noted too that this provision "snuck in the back door" as the result of a highly preferred union offer on wages.

C. Interest

The Union has also, in the Arbitrator's opinion, failed to justify this proposal. Again it has no support in any comparable anywhere. Second, there is no evidence of any abuse of the arbitration process that would even tend to justify such a proposal. This too raises a negative preference for the Union's final offer.

D. Clothing Allowance, Vacations, and Educational Credits

The Arbitrator does not view these issues as particularly determinative of the case in chief. Thus, assuming arguendo that the Union has sustained the burden of proof on these issues, it is not enough to have a controlling impact on the case.

F. Consideration of the Offers as a Whole and Conclusion

Among the various issues, the issue that deserves the most weight is the wage issue. On this issue, the Employer's offer, even though acceptance of it results in some basic wage rate erosion relative to external employers, is preferred. It is preferred because other internal units including police have accepted the offer. Accordingly, the inequity implications that arise from accepting the Union's offer on wages outweigh the external wage erosion especially in view of the fact that the firefighters' total wages, including longevity and education incentive payments, will still be reasonably competitive with external employers.

When the negative preference for the Union's offer on wages is added to the negative implications of their offers on interest and the grievance procedure, the Arbitrator must conclude on the whole that the Employer's offer is more reasonable.

VI. AWARD

The 1984-85 Collective Bargaining Agreement between the City of Racine and the International Association of Firefighters, Local 321 shall include the final offer of the City of Racine and the stipulations of agreement as submitted to the Wisconsin Employment Relations Commission.

Dated this 5TH day of April, 1985, at Eau Claire, Wisconsin.



Gil Vernon, Mediator/Arbitrator

APPENDIX A

CITY OF RACINE (FIRE DEPARTMENT)
Case CXCI, No. 32464, MIA-807

April 19, 1984

AMENDED FINAL OFFER OF THE CITY OF RACINE

1. DURATION: Two years.
2. ARTICLE XXXV - COST-OF-LIVING ALLOWANCE: Amend to provide for a wage freeze and freeze of cost-of-living adjustments for 1984.

Fold in accumulated cost-of-living allowance in effect on December 31, 1983 effective January 1, 1984.

A one percent (1%) across-the-board increase will be implemented January 1, 1985.

The cost-of-living adjustment will recommence in 1985 pursuant to the following schedule:

<u>COLA Adjustment</u>		<u>Between Indexes for</u>
January 1, 1985	For the percentage change if any	Aug. 1984 - Nov. 1984
April 1, 1985	For the percentage change if any	Nov. 1984 - Feb. 1985
July 1, 1985	For the percentage change if any	Feb. 1985 - May 1985
Oct. 1, 1985	For the percentage change if any	May 1985 - Aug. 1985

The cost-of-living adjustment for August 1985 - November 1985 will be due and payable commencing with the first pay period following December 31, 1985.

All calculations for cost-of-living purposes shall use the August 1982 index of 292.8 as a base and shall be multiplied times the employee's January 1, 1983 base salary excluding the January 1983 COLA adjustment but including the fold.

3. Revise ARTICLE XXIX - WORK OUT-OF-GRADE as follows:

ARTICLE XXIX - WORK OUT-OF-GRADE

Whenever an employee shall perform full-time work out of his grade for eight (8) consecutive hours (four (4) consecutive hours for Bureau personnel), he shall be paid for the full time so engaged at either his own rate or the rate of the job, whichever is higher.

Only the employee who is on duty and assuming all of the duties and functions of an employee who is absent from work due to a scheduled off day, vacation, excused or unexcused absence or who is on duty but more than 50 miles from the City limit is eligible for out-of-grade pay.

Captains will be rotated into Assistant Chief positions at the discretion of the Chief.

If a F.I.R.O. is assigned out-of-grade responsibility during the work day and is also assigned on-call duty that night and is called in for arson investigation, the F.I.R.O. will receive the out-of-class pay applicable during the day for the call-in time. For work out-of-grade assignments in the Bureau, departmental seniority will not be available to new Bureau personnel until they have completed their probationary period.

Captains working out-of-grade for Assistant Chiefs will be compensated at Step 1 of the Assistant Chief pay range.

If the reserve rescue squads make one or more emergency runs during a 24-hour shift, the City will pay four (4) hours of out-of-grade pay to the men assigned to the reserve squad on that shift. The reserve squads shall not rotate runs. Rescue 4 shall only go out if all squads need to be out at the same time.

4. Include the following as a 1984-85 understanding:

The current general order on trades will remain in effect for the term of this agreement.

5. Expand the funeral leave provision of Article XX to include one day of funeral leave for the death of an employee's grandparents.
6. ARTICLE XXIII - CLOTHING ALLOWANCE: Amend to increase annual clothing allowance to \$260 effective in 1985.

4/19/84 Michael G. Gordon
4/19/84 Albert J. Smith



RACINE FIREFIGHTERS

LOCAL 321

February 22, 1984

Mr. Mike Roshar
 Mulcahy & Wherry S.C.
 Attorneys & Counselors @ Law
 815 E. Mason St., Suite 1600
 Milwaukee, WI 53202

The following is a list of items submitted as a final offer by local 321:

1. Continue the uncapped cost-of-living allowance; fold the outstanding cost-of-living on the first of the year in each year of the contract.
- 4-19-84 ~~2. Institute a 2% improvement factor the second year of the contract.~~ 4/19/84
MUR
- QRS 3. The city is to remove the limitations on the number of captains allowed off on vacation at any given time.
4. The city shall bear the cost of any change in uniforms that they require during the life of the contract.
5. The city shall pay members for school credits as they are earned.
6. Place a "stay" clause in the grievance procedure.
7. The city shall pay 8% interest on moneys gained retroactive to January 1, 1984.
8. Work out of grade shall be paid whenever the person being replaced is on duty and more than 50 miles from the city of Racine.

~~The following is a list of items agreed to during contract negotiations:~~

1. Overtime in fire alarm dispatch is to be equally distributed among all qualified members.
2. Resolve the pro-rata discrepancy in fire alarm dispatch vacation time.
3. Item number two in the understandings section of the 82-83 contract is to be placed in the body of the new contract.
4. Meal times to be at the discretion of the house captain of each station.
- *5. The union agrees to accept the city's offer of one funeral day for the employee's grandparents.
6. The member performing work out of grade for someone off duty more than 8 hours on the line (4 hours for forty hour employees) or for members on duty and more than 50 miles from the city of Racine, shall be paid for the time worked. ~~This clause shall not affect~~

7. ~~The items not raised in 84-85 contract negotiations but contained in the 82-83 contract shall be a part of the 84-85 agreement.~~

Alvin Smith, President,
Fire-Fighter's Local 321