

SEP 7 1984

STATE OF WISCONSIN
BEFORE THE ARBITRATORWISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of	*	
FRANKLIN PROFESSIONAL FIREFIGHTERS ASSOCIATION, LOCAL 2760, IAFF, AFL-CIO	*	Case XXXI No. 32701 MIA-856 Decision No. 21514-A
For Final and Binding Arbitration Involving Firefighting Personnel in the Employ of	*	Sherwood Malamud Arbitrator
CITY OF FRANKLIN	*	

Appearances:

Gary Vokovitch, State Representative, appearing at the hearing on behalf of the Association, and Thomas S. Gutzke, Secretary-Treasurer, F.P.F.A. Local 2760, on the brief filed on behalf of the Association.

Lindner, Honzik, Marsack, Hayman & Walsh, S.C., Attorneys-at-Law, by Roger E. Walsh, appearing on behalf of the Employer.

JURISDICTION OF ARBITRATOR

On April 2, 1984, the Wisconsin Employment Relations Commission appointed Sherwood Malamud as Arbitrator pursuant to Sec. 111.77(4)(b), Wis. Stats., to determine a dispute between the Franklin Professional Firefighters Association Local 2760, IAFF, AFL-CIO, hereinafter the Association, and the City of Franklin, hereinafter referred to as the Employer. The parties permitted the Arbitrator to attempt to mediate the dispute prior to proceeding with the hearing. The mediation attempt proved to be unsuccessful, and a hearing in the matter was conducted on May 14, 1984 at the City Hall in Franklin, Wisconsin. Post hearing briefs were filed and exchanged through the Arbitrator on June 19, 1984. This dispute is to be resolved pursuant to Form 2, Sec. 111.77(4)(b) in that:

The Arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification."

SUMMARY OF ISSUES

The final offers of both the Employer and the Association contain similar proposals on health insurance. During the course of the hearing, the parties stipulated that the language of the Employer's proposal on health insurance is to be included in the successor to the 1983 collective bargaining agreement. The parties further stipulated that the proposal in the Employer's final offer concerning vacation benefits would not be briefed by the parties nor would it be considered by the Arbitrator in his selection of the final offer of the Employer or the Association.

The issues between the parties are as follows:

1. Wages:Employer Offer

2.5% increase effective January 1, 1984.

2.0% increase effective July 1, 1984. The Employer makes a two-year proposal on wages. In the second year, the Employer's offer provides:
2.0% increase effective January 1, 1985.
2.0% increase effective July 1, 1985.

Association Offer

4% increase effective January 1, 1984.
2% increase effective July 1, 1984. The Association's final offer contains a one-year proposal on wages.

2. Term:

The Employer proposes a two-year term for the successor agreement which would be in effect from January 1, 1984 through December 31, 1985.

The Association proposes a one-year term for the successor agreement which under its proposal said agreement would be in effect from January 1, 1984 through December 31, 1984.

3. Work Hours:

The Association proposes to revise the language of Article V, Sec. 2, by adding the underlined language below and by deleting the phrase in brackets from said provision.

"The workweek will be forty-five (45) hours per week [on the basis of nine (9) consecutive hours per day], Monday through Friday, from 7:00 a.m. to 4:00 p.m. with Saturday and Sunday off.

The Employer proposes to retain the current language of Article V, Sec. 2 in its present form.

BACKGROUND AND LEGAL FRAMEWORK FOR
THE RESOLUTION OF THE DISPUTE

The City of Franklin employs one Superintendent of Equipment, one Fire Inspector and five full-time Firefighters who are in the collective bargaining unit and subject to these proceedings. In November, 1983, the Fire Chief retired, and the Employer is presently engaged in a search for a new Fire Chief. The City of Franklin also employs an Acting Chief/Administrative Captain who is not included in the collective bargaining unit. In addition to the seven full-time employees and two supervisors, the City of Franklin maintains a force of 86 paid on-call firefighters who are not in the collective bargaining unit and who are not subject to these proceedings. The City of Franklin, hereinafter the City, maintains four fire stations, a main station near the City Hall and three substations located throughout the city. Prior to May 14, 1984, the seven full-time bargaining unit employees worked a nine-hour shift, on Monday through Friday from 7:00 a.m. to 4:00 p.m. In addition, prior to May 14, 1984, each full-time firefighter was required to be on stand-by one day per week from 6:00 p.m. to 6:00 a.m. Under Article V, Sec. 5, a provision included in the agreement pursuant to a prior Interest Arbitration Award, the firefighter is paid three hours pay at straight time for remaining on stand-by for this twelve-hour period. The firefighter on stand-by on the rescue squad for the twelve-hour period once per week was also on stand-by from 4:00 p.m. to 6:00 p.m. prior to and from 6:00 a.m. to 7:00 a.m. after he was on stand-by one day per week. These three additional hours of stand-by were unpaid. The full-time employees were available on this three-hour stand-by under an informal arrangement among the employees and

supervisory personnel of the department. The Arbitrator will describe the hours of work subsequent to May 14 in his discussion of the hours of work issue below.

Sec. 111.77, Wis. Stats., establishes the criteria on the basis of which the final offer of the Employer or the Association is to be selected. The statute provides at Sec. 111.77(6)(a) through (h) that:

In reaching a decision the Arbitrator shall give weight to the following factors:

- (a) The lawful authority of the Employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
- (d) Comparison of the wages, hours and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally:
 1. In public employment in comparable communities.
 2. In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

POSITIONS OF THE PARTIES

The Association asserts that the 13 other suburban communities located in Milwaukee County constitute the comparables, and these communities should serve as a basis for comparison of the wages of the Franklin firefighters to the firefighters of these communities. The Association sets out the percent of wage increase received by firefighters in Franklin and the 13 other suburban Milwaukee County communities from 1975 through 1984. During this period, the Franklin firefighters went from first to last place in ranking in monthly wages received. Whether the Employer or the

Association offer is selected, the Franklin firefighter will have received the lowest percent of increase over this ten-year period. The Association notes that in 1975 \$90.77 separated the department paying the highest wages to its firefighters and the department eleventh in ranking at that time. The Association offer for calendar year 1984 would leave the Franklin firefighters \$85.92 per month behind the highest paid department of the 14 Milwaukee County suburban communities. The Employer's offer is \$116.60 per month less than the wage paid to a firefighter in the highest paying department of these 14 communities. The Association notes as well that its offer for calendar year 1984 costs 5.04% and generates an increase totaling \$1,213.08 for 1984. The Employer's offer generates but \$848.52 and the cost of the split raise it offers is 3.53% for calendar year 1984. The Association's offer for 1984 is the fourth highest among the Milwaukee County suburban communities, and the Employer's offer is the fourth lowest of the these 14 suburban communities. Furthermore, the Association asserts that its offer is closer to the median salary paid to firefighters in these 14 suburban communities for 1984 which is \$1,119 in Brown Deer.

The Association notes that the Employer's offer for 1985 is well below the range of settlements in the few communities that have settled for 1985. To date settlements range from 3.88% to 6% in settlements which generate from \$1,563.94 to \$1,019.10. The Employer's offer for 1985 costs 3.02% and generates \$759.96 per month.

The Association argues that a comparison of wage adjustments between the Franklin policeman and firefighter from the period of 1971 through 1984 supports the Association's position. In 1971 the police officer earned \$69.54 per month more than the Franklin firefighter. In nine of the thirteen years the employees of the two departments have received different raises. The Association asserts that there is no link between the raises received by firefighters and police officers in the City of Franklin. In 1983, the policemen received an 8% increase; the firefighters received a 6% increase. If the Employer were to prevail in these proceedings, the Association asserts that the patrolman would be earning 3.65% more than the firefighter, whereas under the Association's proposal the firefighter would be earning 2.15% less than the patrolman.

There is a \$2,607.84 difference between the cost of the total final offers of the Association and the Employer. The Association argues that the Employer has the resources and funds budgeted to pay the wages demanded in the Association's proposal should the Arbitrator find in favor of the Association in these proceedings.

On the issue of hours, the Association notes that effective on the date of hearing scheduled in this matter, the Employer changed the work hours of the full-time employees of the department and established two split shifts. The Association argues, therefore, that the employees of the department are entitled to know their hours of work and not leave that subject to change by the Employer, at its will. The Association argues as well that every other fire department has its hours specified in their agreements. The other organized City units, i.e., the police and Department of Public Works, specify the hours of work in their Agreements with the City. The Association argues that the Employer's position is one in which the matter of hours of work is being removed from the bargaining table by the Employer.

In its brief, the Association reviews and analyzes the various exhibits submitted by the Employer at the arbitration hearing. The Association notes that the Employer's Exhibit No. 4 demonstrates that the Association offer more closely approximates the average wage increase for 1984 than does that offered by the Employer. The Association argues that the Employer's attempt to establish an hourly wage rate comparison among the eight suburban communities in the southern half of Milwaukee County is inappropriate. The Association notes that Arbitrator Kerkman noted in his award, wherein the issue was whether the Franklin firefighter should receive three hours of straight-time pay for remaining on stand-by for a period of twelve hours, that the time commitment made by Franklin firefighters was 60 hours per week, and in that regard it was four hours greater than the 56-hour work week common in the fire departments of the Milwaukee County suburban communities. If the 60-hour workweek is used as a basis for computing an hourly wage rate rather than the 45- or 48-hour workweek used by the Employer in its argument, then the average hourly rate for a firefighter in the City of Franklin is \$8.07 under the Employer's offer and \$8.18 under the Association's offer. The Association further argues that although the taxpayers of the City of Franklin have encountered a large tax increase during the past three years, that increase is not much greater than the increase in taxes experienced by the other suburban communities in Milwaukee County.

The Employer argues that its final offer is preferable to that of the Association's on each of the issues in dispute between the parties. The Employer first points to the issue of term. It strenuously argues that both the Employer and the Association need a respite from the seemingly endless negotiations which commenced in 1980. If the Association's offer is selected the bargaining process will continue through 1986. The Employer notes that this is the third time in four years that the parties have asked an arbitrator to impose a settlement. The Employer supports its claim that the selection of the Association's offer will only lead to another arbitration in 1985 in that the Employer's offer for 1985 is consistent with what it has offered other units for that year. In order to remain true to the voluntary settlements achieved with its other bargaining units, the Employer would have to stand by its offer for 1985 if the Arbitrator should select the Association's final offer in this proceeding. On the other hand, the selection of the Employer's final offer will provide both parties with a twelve-month respite from the collective bargaining process. That respite could well provide the stabilizing force necessary to improve the parties' bargaining relationship.

The Employer then turns in its argument to the work hours proposal of the Association. The Employer finds that the proposal is too restrictive in restraining the management's right to schedule employees. The Employer notes that the firefighters of the City of Franklin work a unique schedule as compared to the firefighters of the other Milwaukee County suburban communities. The other suburban communities maintain a three-platoon system on a 24-hour basis. The City of Franklin employs its full-time firefighters on a Monday to Friday schedule for 45 hours per week. That kind of schedule creates the need for flexibility in scheduling full-time staff. With the retirement of the City's former fire chief and with the impending hire of a new chief, this need for flexibility is even more important, at this time. The schedule change made by the Employer was implemented in order to reduce overtime costs. One benefit to the employees of the department is that the new schedule will eliminate the three hours of stand-by worked by employees when they serve their twelve

hours of weekly stand-by. Both Arbitrators Kerkman and Michelstetter made note of the increase in time commitment that these additional three-hour stand-by periods of one hour prior to the regular workshift and two hours at the end of the work day add to the total workweek of the Franklin firefighter. The new schedule substantially reduces the time commitment necessary from the full-time firefighters of the department. The Employer notes that although the police collective bargaining agreement does specify the hours of the shifts in the department, that contract also contains a provision which permits the Employer to schedule additional shifts as the Employer may require. The Employer notes that interest arbitrators often require that the party proposing a change in an existing collective bargaining agreement present clear and convincing evidence as to the necessity for that change. Often these arbitrators express the view that such modifications of an existing collective bargaining agreement should be achieved through negotiation rather than imposed by arbitral fiat.

The Employer argues that its wage offer for 1984 and 1985 is the more reasonable offer in this case. First, its offer is internally consistent with the wage increases offered to other bargaining units of the Employer. In fact, the percentage increases over 1984 and 1985 which the Employer offered to the firefighters here is identical to the percentage increase which the City has offered and achieved in a voluntary settlement with the policemen's collective bargaining unit. The Employer cites the decisions of other interest arbitrators who have accepted a pattern settlement even in law enforcement and firefighter units by noting that:

"Although comparisons between law enforcement employees are generally more persuasive than comparisons with other employees, arbitrators have given great weight to settlements between an employer and its other bargaining unit when determining the reasonableness of offers.. See, e.g., Brown County, Dec. No. 20455-A (Michelstetter, 1983); Manitowoc County, Dec. No. 19442-A (Weisberger, 1983); Milwaukee County, Dec. No. 20562-A (Fleischli, 1983); City of Brookfield, Dec. No. 19573-A (Rice, 1982); City of Oconto, Dec. No. 19800-A (Monfils, 1982).

"The frustration of a union's being locked into an established pattern of settlement is understandable, but, in the absence of compelling circumstances, late settlements above a pattern established earlier penalize employees involved in the voluntary negotiations. This is destructive of the collective bargaining system and discourages voluntary settlements." (Arbitrator Jay Grenig, Rock County, Dec. No. 20600.)

The City argues that the Association has not demonstrated the compelling circumstances which would require selection of the Association's higher wage demand over the Employer's patterned settlement offer which it has made here. The Employer argues that its offer with a lift of 4.55% and a cost of 3.52% for 1984 is greater than the increase in hourly earnings experienced by production workers in the State of Wisconsin at 3.4% and in the Milwaukee area at 2.8%. The Employer argues that its list of comparables comprising the suburban communities located in the southern half of Milwaukee County has been recognized as the primary comparables in the following interest arbitration awards: Cudahy Fire, Dec. No. 19375; Greenfield Police, Dec. No. 20611; St. Francis Fire, Dec. No. 19645. The City notes again that none of the comparable communities maintain a fire department wherein its employees work a Monday through Friday schedule for a 45-hour workweek. Thus, the comparability factor should have less force in this

arbitration proceeding. Nonetheless, the Employer argues that for 1984 the wage increases of firefighters in these communities ranged from 2.5% to 6.1%. The average increase of 4.2% is slightly less than the City's offer of 4.55%. The Association's offer is substantially higher than the average increase experienced in these eight other suburban communities in that the Association's offer is 6.1%. The Employer argues that the monthly dollar increase in the southern eight is \$87 per month for 1984 as compared with the \$91 per month increase inherent in the City's offer and the \$122 increase proposed by the Association. The Employer argues as well that its offer maintains the ranking of the City's firefighters as seventh among the southern eight and twelfth among the fourteen Milwaukee County suburban communities. The Employer notes that the firefighter bargaining unit reached a voluntary agreement in 1983. Under that agreement it continued its ranking as seventh among the southern eight and twelfth among the fourteen Milwaukee County suburban communities. The Employer's offer would only continue what the Association accepted through a voluntary settlement in 1983. The Employer notes the remarks of Arbitrator William W. Petrie in Valders Schools (Dec. No. 19804) in which he noted that catch up questions have force where an erosion of wages has occurred from the date of the last voluntary settlement. Here, the Employer notes that the last voluntary settlement was in 1983. The Employer urges this Arbitrator to compare the hourly wage rate received by Franklin's firefighters who work 45 or, 48, if the three hours of straight-time pay for the twelve hours of stand-by is added to the 45 hour workweek of the City's firefighters. The hourly rate for a 48-hour workweek of the Franklin firefighter is substantially higher than the hourly rate of the firefighters of these other communities. The difference is \$1.20 per hour under the City's offer over the average hourly rate received by firefighters in the southern eight or \$1.87 per hour if the Association's offer is used in comparing it to the average hourly rate received by firefighters in the southern eight suburban communities. The Employer notes that Franklin's hourly rate is at least \$.31 per hour above the next highest hourly wage rate, even using a 48-hour workweek (and \$1.05 per hour above the third-place community, again using a 48-hour workweek).

The Employer argues that the taxpayers of the City of Franklin have suffered during the past three years a 40.9% increase in the tax rate for municipal purposes only; a percentage increase exceeded by only one other municipality, and its 24.5% tax rate increase from 1983 to 1984 again was only exceeded by one other suburban municipality.

For all of the above reasons, the City concludes and states that its offer is preferable to that of the Association's.

DISCUSSION

The Arbitrator will first consider the wage and duration or term of the collective bargaining agreement issues. The Association proposal to change Article V, Sec. 2, will then be considered. This award will conclude with a statement of the reasons for the selection of the Employer's or the Association's final offer.

WAGES AND DURATION

The issue as to the length of a successor agreement, be it one or two years, cannot be decided independent of the wage issue. Here, the Employer proposes a complete two-year

contract. Its proposal contains a specific wage proposal for calendar years 1984 and 1985. The Employer has made a strong case for the selection of a two-year proposal over a one-year proposal. The seemingly endless negotiation process the parties have engaged in since 1981 and which may continue through 1986, if the Association offer is selected, is reflective of the bargaining relationship established by the parties.

The Arbitrator knows that the decision of one interest arbitrator cannot in and of itself serve to alter the relationship between the parties. Rather, that change can only be achieved by the parties themselves.

On the other hand, if a two-year proposal is able to maintain the relative relationship in ranking of the employees of the bargaining unit to that of similar employee groups in comparable communities and if it is an offer that at least lends itself to the description that it maintains wages and conditions of employment, everything else remaining relatively equal, condition at its termination as compared to its commencement, then a multi-year proposal is certainly preferable to a single-year offer. However, a multi-year offer in and of itself will not overcome a proposal which may prove to be inadequate in one or more of the years covered by the term of the agreement.¹ The selection of a two-year versus a one-year proposal must be based on the relative merit of the substance of each year of the proposal on the issues in dispute.

Comparability Factor

The Arbitrator now turns to evaluate the wage proposal of the City of Franklin for calendar years 1984 and 1985 and the single-year proposal of the Association for calendar year 1984. In applying the comparability criterion, the Arbitrator has adopted the Employer's suggested comparables of the southern Milwaukee eight fire departments. In this case, these comparables mirror those of the larger set of comparables suggested by the Association, namely, the fourteen suburban Milwaukee County communities. Furthermore, four of the eight southern Milwaukee communities have achieved settlements for

¹It is noteworthy that in a recent arbitration between the City of Franklin and its police officers, the City proposed a one-year agreement and the policemen a two-year agreement for 1982 and 1983. The Arbitrator, in that case, selected the proposal of the police officers. In doing so, Arbitrator Jay Grenig stated that:

"The duration of the agreement is a serious concern here. The Arbitrator cannot divide the issue and must select one of the total final offers. With respect to the parties' 1982 wage offers, the comparison of settlement rates is entitled to great weight because the closer a party's offer is to the average settlement rate, the more likely the status quo will be preserved. Furthermore, arbitrators have considered settlement rates as a factor in determining the actual cost of living for an area."

The arbitrator went on to conclude that the wage proposal of the police officers was closer to the average in both 1982 and 1983. Thereafter, the arbitrator notes that the two-year agreement would provide a greater measure of stability to the parties' relationship. See, City of Franklin (19790-A 1/83).

1985. There is sufficient data among these comparables to establish a pattern for use in evaluating the second year of the City's offer.²

In City Exhibit #4 the average monthly wage rate for a top step firefighter is \$2,135.75. The Employer's offer of \$2,097 for the top firefighter is the produce of applying the split percentage increases to the end rate for 1983. This monthly wage rate maintains the seventh of eighth place ranking of the Franklin firefighters. On the other hand, the Association's proposed year end monthly wage rate is \$2,128. This proposal would place the Franklin firefighters \$4.00 per month ahead of the Greendale firefighters and alter the Franklin firefighters' ranking from seventh to sixth place. The Association's proposal would place the monthly wage rate of the Franklin firefighter just \$7.75 lower than the average monthly wage rate of the firefighters in the southern eight suburban Milwaukee County communities. The Employer's offer would leave the Franklin firefighters \$38.75 below the average monthly wage rate of \$2,135.75. Although the Employer's offer leaves the Franklin firefighter further away from the average monthly wage of firefighters in comparable communities, the Employer's offer brings the monthly wage rate of the Franklin firefighter closer to the average in 1984 than it was in 1983. In 1983 the voluntary settlement reached between the City and the Association left the Franklin firefighter \$42.75 below the average. As noted above, the Employer's year end proposed monthly wage rate is \$38.75 below the average monthly wage of the eight comparable communities.

City Exhibit #6 reflects the wage settlements in four of the eight comparable communities. The monthly wage rates for Greendale for 1985 is \$2,230; Greenfield, \$2,302; West Allis, \$2,302; and West Milwaukee, \$2,189. The year end rate for the Franklin firefighters for 1985 is \$2,181.81 under the City's two-year proposal. The City's offer would move the Franklin firefighters behind the West Milwaukee firefighters who were in eighth place in 1984 and place the Franklin Firefighters \$48.19 behind the Greendale firefighters in 1985 wherein in 1984 under the City's offer the Franklin firefighters were \$27 behind the monthly wage rate of the Greendale firefighters.

The Employer argues that its offer is consistent with and identical to the offer it has made to other bargaining units employed by the City of Franklin, especially that of the police patrolman unit. City Exhibit #3 indicates that for 1984 the police patrolman received a 4.6% increase; the heavy equipment operator in the Department of Public Works a 5.1% increase; the City Hall clerical employees a 4.0% increase; the police clerical employees a 3.7% increase; and the firefighters are offered herein a 4.5% increase. Similarly, the settlements achieved in these units for 1985 (except the firefighter unit) range from 3.6% to 4.0%. The Arbitrator finds that the range of settlements achieved in the City's other bargaining units is closer to that of the Employer's offer; yet, there is no exact pattern or level of settlement achieved in either 1984 or 1985 among all the units employed by the City. The Association's offer with a lift of 6% and a cost slightly in excess of 5% is higher than the settlements achieved in the other units for 1984.

²The comparable communities are the eight other southern suburban Milwaukee County communities which are: Cudahy, Greendale, Greenfield, Oak Creek, St. Francis, South Milwaukee, West Allis, and West Milwaukee.

Although the Employer has urged the Arbitrator to engage in a comparison of the hourly rate of the Franklin firefighters as compared to the hourly rate of the firefighters employed in the eight other comparable communities, the Arbitrator does not accept the premise upon which the hourly rate is established. The City bases its hourly rate calculation on the new shift schedules established by the City on the date of the arbitration hearing in this matter, namely, May 14, 1984. There is no indication in this record that the City will maintain this new schedule even during the pendency of this arbitration award. On the other hand, the 7:00 a.m. to 4:00 p.m. work schedule together with the various stand-by arrangements were recognized in prior arbitration awards and in great part remained in effect up until the Employer's decision to alter the hours of work of its full-time firefighter employees. Therefore, in the analysis above, the Arbitrator compares the monthly wage rate of the Franklin firefighters to the monthly wage rate of firefighters in the comparable suburban communities. A summary of the above analysis appears in Chart 1 on the following page.

A summary of the analysis of the comparability factor on the wage and duration issue demonstrates that for 1984 the lift of the City wage offer is within \$4.00 of the average increase provided by the comparable communities to its firefighters.³

The City's offer improves the position of the Franklin firefighter relative to the average monthly wage rate paid to firefighters over the 1983 average. Furthermore, the City's offer more closely approximates the internal settlements achieved in the City's other bargaining units. On the other hand, the Association's offer improves the relative rank of the Franklin firefighters from seventh or sixth place and the year end lift increase generated by the Association's offer is higher than the average increase received by firefighters in the comparable communities. For 1984, the Employer's proposal on wages is preferable to that of the Association's.

However, the Employer's second year proposal would place the Franklin firefighters in rank behind the West Milwaukee firefighters and would more than double the dollar difference from the average monthly salary paid to firefighters among the four comparable settled units. This conclusion is buttressed by the fact that the Arbitrator used the year end or lift rate in comparing the increases and wage rates for 1985 rather than the one-year cost of the City's proposed 2% plus 2% split raise for 1985. The City in its proposal for 1985, moves the Franklin firefighters from \$38.75 below the average to \$73.94 below the average for 1985 for a net increase in the distance from the average monthly wage rate of \$35.19. The Association in its offer for only 1984 reduces the difference between the average monthly salary for a firefighter from 1983 to 1984 by \$35. The Employer's proposal in the second year not only increases by a slightly larger amount the differential between the average firefighter monthly rate and that of the Franklin firefighter, but, based on the information available, it may well reduce the rank of the Franklin firefighter. Furthermore, even if one were to take the year end lift rate increase generated by the second

³The Arbitrator uses the year end or lift rate in the comparisons above because both the Employer's and the Association's offers propose a split increase. In comparing the monthly wage rate, the year end or lift rate is more useful for comparison purposes.

CHART 1

	<u>1984</u>	<u>Monthly Wage</u>	<u>\$ Increase</u>	<u>% Increase</u>	<u>Rank</u>	<u>1985</u>	<u>Monthly Wage</u>	<u>\$ Increase</u>	<u>% Increase</u>
1. Cudahy		2,173	\$ 75	3.6%	2		Unknown		
2. Greendale		2,124	122	6.1	6		2,230	106	4.9
3. Greenfield		2,172	123	6.0	3		2,302	130	5.9
4. Oak Creek		2,133	101	5.0	5		Unknown		
5. St. Francis		2,025	96	5.0	9		Unknown		
6. South Milwaukee		2,170	53	2.5	4		Unknown		
7. West Allis		2,214	75	3.5	1		2,302	88	3.9
8. West Milwaukee		2,075	51	2.5	8		2,189	114	5.5
9. Franklin <u>City</u>		2,097 (lift)	91	4.5 (lift)	7		2,181.81	84.84 (lift)	4.0 (lift)
Franklin <u>Association</u>		2,128 (lift)	122	6.0 (lift)					

Average monthly wage is \$2,135.75.

The City offer is \$38.75 below the average (based on year end rate).

The Association is \$7.75 below the average (based on year end rate).

Average monthly wage of settled units for 1985 - \$2,255.75.

City offer is \$73.94 less than average monthly wage for 1985.

year 2% plus 2% proposal of the City, the increase in dollars it generates, \$84.84, is substantially below the \$109.50 average increase generated by the settlements in the four other comparable units for 1985.

The Factor - The Interest of the Public

The tax increase experienced by the residents of the City of Franklin for municipal purposes is only slightly higher than those experienced by the other comparable communities. There is no data which would dictate the imposition of the substantially lower second year increase for 1985.

Therefore, the Arbitrator concludes on the wage and duration issues that the one-year proposal of the Association on wages is preferable to that of the City's two-year proposal.

HOURS OF WORK

The Association justifies its proposal on two grounds. First, the other bargaining units in the City of Franklin have agreements with the City wherein their hours of work are specified. Furthermore, the Association demonstrates that the collective bargaining agreements of firefighter units in comparable communities contain provisions which specify the starting time for firefighters.

On this issue, the Arbitrator finds that the 45-hour Monday through Friday work schedule of the City of Franklin firefighters is so unique that it cannot be compared to the 24-hour work schedules which are established in all the other fire departments in the suburban Milwaukee County communities. The proposal of the Association limits the scheduling of full-time firefighter employees to one shift from 7:00 a.m. to 4:00 p.m. In this regard, the Association proposal is extremely restrictive. The police officer contract between the City and the police officer union contains a provision which permits the City to establish additional shifts. The Association proposal does not permit the City that flexibility.

Although the City action on the day of the arbitration hearing in this matter demonstrates that the Association's concern about unilateral changes in the hours of work by the City is justified, nonetheless, the Association proposal is overly restrictive in an area like firefighting where the service provided is often under emergency circumstances which are not obviously subject to a fixed schedule. In light of the unique composition of the fire department, i.e., seven full-time employees and 86 paid on-call additional personnel, the City should have additional flexibility in scheduling its full-time employees.

The Association proposes the fixing of the work schedule from 7:00 a.m. to 4:00 p.m. However, there is no indication that in its total proposal it is attempting to purchase or buy this benefit through a reduced wage increase. This Arbitrator believes that changes to an established provision in a collective bargaining agreement should be made by an arbitrator only where the need for a change has been demonstrated and where the party proposing the change has been able to demonstrate that its proposal is either modest or generous, as the case may be, to justify the arbitrator's insertion of that proposal in the parties' collective bargaining agreement. The Association's proposal for a one-year agreement with a lift of 6% reflects no attempt to purchase this provision and have it included in the agreement.

Although the May 9, 1984 memorandum from the City to its firefighters establishing two shifts and the rotation of those shifts, i.e., a 6:00 a.m. to 3:00 p.m. shift and a 9:00 a.m. to 6:00 p.m. shift may be burdensome to the employees of the department, the Arbitrator concludes that the Association proposal is too restrictive. Therefore, the Arbitrator finds that the Employer's proposal to retain the present language of the agreement is the preferable proposal.

SELECTION OF THE FINAL OFFER

The Arbitrator finds that for calendar year 1984, the City's proposal is preferable to that of the Association's. However, as a result of the strong negative impact of the second year of the City's proposal, the Arbitrator prefers the proposal of the Association on the issues of wages and duration of the agreement. The Arbitrator finds that the Association's proposal on hours of work is far too restrictive. The City's action of establishing two shifts effective the date of the Arbitration hearing demonstrates the need for some negotiated amendment to Article V, Sec. 2, of the Agreement. In light of the drawbacks to the proposals of both the City and the Association, the selection of the final offer to be included in a successor to the 1983 Agreement is to be based upon the selection of the offer which is the lesser of two evils.

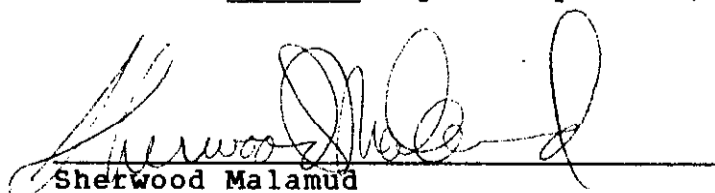
On the whole, the monetary issue is the more important issue in this case, and it must receive greater weight in balancing the preferability of the final offer of the Association and the City. Therefore, the Arbitrator has selected the final offer of the Association. Since the Association's proposal is for one year, the Arbitrator realizes that upon receipt of this award, the parties will in all probability commence negotiations for a successor to the 1984 agreement. In those negotiations, the parties would do well to modify the language inserted by this award of Article V, Sec. 2, to permit the City to establish additional shifts. If the language is modified to permit the City to establish additional shifts, the parties may also establish a procedure which is mutually acceptable to permit employees to post to a shift or to rotate shifts. The wage rate achieved through the bargaining process may also reflect which of the several options mentioned above is to be included in the 1985 agreement between the parties.

On the basis of the above discussion, the Arbitrator issues the following:

AWARD

Based on the statutory criteria in Sec. 111.77(6)(a) through (h), Wis. Stats., the evidence and arguments of the parties, and for the reasons discussed above, the Arbitrator selects the Final Offer of the Franklin Professional Firefighters Association, Local 2760, IAFF, AFL-CIO, Appendix B as modified by the parties' stipulations entered into at the arbitration hearing, to be included together with the stipulations of the parties in the 1984 collective bargaining agreement between the City of Franklin and the Franklin Professional Firefighters Association, Local 2760, IAFF, AFL-CIO.

Dated at Madison, Wisconsin, this 6th day of September, 1984.


Sherwood Malamud
Arbitrator

"A"

CITY'S FINAL OFFER

2/20/84

CITY PROPOSES THAT ALL TERMS & CONDITIONS AS SET FORTH IN THE LABOR AGREEMENT BETWEEN THE CITY OF FRANKLIN AND THE FRANKLIN PROFESSIONAL FIREFIGHTERS FOR 1983 BE INCORPORATED INTO A CONTRACT FOR THE YEARS 1984 AND 1985 EXCEPT WITH THE FOLLOWING PROPOSED CHANGES

ARTICLE VI WAGES

CITY PROPOSES A 2½% INCREASE TO THE BASE PAY SET FORTH IN THE PRESENT CONTRACT ON JAN. 1, 1984, AN ADDITIONAL 2% INCREASE ON JULY 1, 1984, A 2% INCREASE ON JAN. 1, 1985 AND A ~~2%~~ 2% INCREASE ON JULY 1, 1985 (A TWO YEAR CONTRACT)

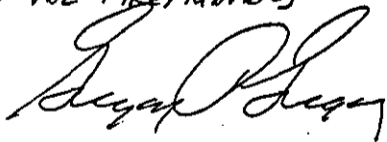
ARTICLE VII VACATIONS

ADD PAR (A) ~~25~~ 25 WORKING DAYS AFTER THE EIGHTEENTH ^{YEAR} ~~DAY~~ OF SERVICE, PROVIDED THE EMPLOYEE HAS ACCUMULATED AT LEAST 130 DAYS OF SICK LEAVE IN THE YEAR THE VACATION IS TO BE TAKEN, PROVIDED FURTHER THAT SUCH FIVE (5) DAYS WILL BE DEDUCTED FROM THE SICK LEAVE ACCOUNT OF THE EMPLOYEE.

ARTICLE VIII HOSPITAL AND SURGICAL INSURANCE

LIFE INSURANCE

CITY PROPOSES TO PROVIDE "90-10" PLAN OF INSURANCE THAT IS PROVIDED TO THE POLICE IN LIEU OF THE 80-20 PLAN NOW BEING PROVIDED THE FIREFIGHTERS



"B"

2-20-84

Local 2760

Union final offer

Article IV section 1 Wages

Change all classifications to increase by
4% January 1, 1984 plus 2% July 1, 1984

Article IV section 2 Hours of work.

The work week will be forty-five (45)
hours per week Monday through Friday
from 7:00 AM to 4:00 PM with Saturday and
Sunday off.

Article XII section 1 Hospital + Surgical Insurance.

A 90% - 10% Co-insurance plan.

The employees from 1979 to 1981 had in effect
a 90-10 insurance plan with the employee
paying 10% of the medical bills up to \$150
per person (\$1,500 in bills per person). The covered
employee shall not pay more than \$450 per
family for medical bills during the calendar
year. All premiums for said insurance
coverage shall be paid by the employer.
All other terms + conditions to remain the same.

Articles

James W. Houtton