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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

DECISION

IN THE MATTER OF THE

KENOSHA PROFESSIONAL FIREFIGHTERS
UNION, LOCAL 414, IAFF

For Final and Binding Arbitration
Involving Fire Fighting Personnel
in the Employ of

CITY OF KENOSHA (FIRE DEPARTMENT)

Case 106
No. 36011
MIA-1034

Dec. No. 23270-A

I. HEARING

On May 9, 1986, a hearing was held in the above-entitled mediation/arbitration dispute in the City Hall of the City of Kenosha, Wisconsin. Prior to the commencement of the hearing, the parties concluded that a further mediation effort would not be successful. The hearing was conducted from 10:25 AM until 3:25 PM with a lunch recess. Exhibits were submitted by the parties and testimony was taken from witnesses.

II. APPEARANCES

Attorney Roger E. Walsh, of Lindner & Marsack, S.C., appeared on behalf of the City. Mr. Walsh was accompanied by Charles Grapentine, Personnel Director for the City.

Attorney Richard V. Graylow, of Lawton & Cates, S.C., appeared on behalf of the Union. Also present were John P. Celebre, President, Local 414, IAFF; and the following Local 414 members: Mark Honey, Jeff Flasch, John Arnold, Alan Horgen, Richard Bosanko, and Bob Martin. The Union also called Chief Gerald Poltrak as a witness.

III. NATURE OF THE PROCEEDINGS

This is an action brought pursuant to Section 111.77 Wis.Stats., which relates to the settlement of disputes in collective bargaining units composed of law enforcement personnel and firefighters.

On the 16th of January 1986, the Wisconsin Employment Relations Commission designated its Chairman, Herman Torosian, to act as an investigator pursuant to the Employment Relations Act for the purpose of determining if an impasse existed in the negotiations between the Professional Firefighters Union and the City of Kenosha.

Mr. Torosian met with the parties on December 23, 1985 and January 14, 1986 in an effort to mediate the dispute. On the 16th of January, the WERC concluded that an impasse existed and advised the parties to select an arbitrator.

This Arbitrator was officially advised that he had been selected by the parties on February 17, 1986. A hearing was scheduled on May 9, 1986 and a subsequent briefing schedule was set requiring both parties to submit briefs by June 27th and reply briefs by July 7th. Pursuant to agreements, the briefing schedule was extended. Both parties submitted their original briefs, dated July 14, 1986. Reply briefs were sent on August 5, 1986. On August 11, 1986, an additional letter was submitted by Mr. Walsh on behalf of the employer.

IV. THE FINAL OFFERS

A. The City of Kenosha Final Offer

The City of Kenosha final offer reads as follows:

CITY OF KENOSHA / FINAL OFFER

The provisions of the 1984-85 contract are continued, except as modified by "Agreed Items" and the following:

1. Revise 11.02, page 10, as follows:

	<u>A</u>	<u>B</u>	<u>C</u>
Fire Department House Captain	\$2,301	\$2,341	\$2,341
Fire Department Line Captain	2,289	2,329	2,329
Fire Department Bureau Lieutenant	2,214	2,264	2,264
Fire Department Lieutenant	2,191	2,223	2,223
Fire Department Apparatus Operator	2,132	-	2,132
Firefighter	1,995	2,046	2,098

For employees hired after 01/01/86:

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>
Firefighter	\$1,800	\$1,895	\$1,985	\$2,046	\$2,098

2. Section 19.09, page 22, line 9 - after the word "leave" insert the following: "if the position still exists. If no such position exists, the employee shall be given a similar position in the same, or otherwise in a lower, pay classification for which the employee is qualified and the provisions for making layoffs shall apply if necessary."

3. Memorandum Of Understanding

In the event any of the quarterly cost of living adjustments to be granted in 1986 (i.e., effective January 1, 1986, April 1, 1986, July 1, 1986, and October 1, 1986) pursuant to the formula contained in Article 12 of the 1986 Agreement do not equal \$20.76 per month, the City agrees to pay the full \$20.76 per month adjustment for each such quarter in 1986 and such full amount will, pursuant to Article 12, Paragraph F, be made part of the base wage or salary effective December 31, 1986.

Dated this _____ day of _____, 1986

B. The Union Final Offer

The final offer submitted by Local 414, IAFF reads as follows:

UNION / FINAL OFFER

The provisions of the 1984-85 contract are continued except as modified by "signed items" and by the following:

1. 4% increase across the board plus COLA, i.e., base pay to Firefighter \$2,088 x .04 = \$2,171.

V. STATUTORY CRITERIA

Section 111.77(6) Wis.Stats., requires that an arbitrator consider the following factors in reaching his decision:

111.77(6) 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 those costs.
- (d) Comparison of wages, hours, and conditions of employment of the employees involved in Arbitration proceedings with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally:
 - (1) In public employment in comparable communities,
 - (2) In private employment in comparable communities,
- (e) The average consumer price for goods and services commonly known as the cost of living.
- (f) The overall compensation presently received by employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, and 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.

VI. THE ISSUES

There are four issues in the dispute between the City of Kenosha and Local 414 IAFF. Those issues are as follows: First, what rate of pay should firefighters currently employed by the City of Kenosha receive during the term of this contract, commencing on December 31, 1985. Second, should there be a change in the starting pay rate for new firefighters hired after this contract takes effect with additional steps added to the salary structure so future firefighters reach the maximum compensation level at a later date in their employment? Third, shall a limit be imposed by a formula on the cost of living adjustment awarded to firefighters. Fourth, should the provisions of the labor agreement relating to employee's return from leaves of absence be amended to remove the guarantee that an employee can return to his old position, or if it no longer exists, return at the same rate of pay which was in effect at the time of his leave.

VII. THE UNION'S POSITION

The Union urges consideration of the comparable communities as the Cities of Racine, Waukesha, Wauwatosa and West Allis in prior arbitrations. Arbitrators Ziedler and Michelstetter have found these four cities are appropriate for making comparisons with Kenosha. In a previous case involving the Kenosha Fire Department, WERC Decision 17573-A (1980), the Arbitrator held that Racine, West Allis, Wauwatosa and Waukesha were the cities to which Kenosha should be compared.

The Union strongly opposes the inclusion of Beloit, Janesville, and Madison in a list of comparable cities. There are major differences in the structure of the fire departments. Differences in demographics of the municipalities make the ability to compare the union contracts of dubious value.

The Union contends that the City proposal, regarding a wage increase, is inadequate. Their own wage proposal, providing for a 4% increase, is needed. They contend that the City, during the 1984-85 contract negotiations, came to the bargaining table expressing great concern about the costs of health insurance. The settlement that was reached at that time took into consideration this increased insurance cost and provided wages that were lower than they should have been because of Union acquiescence with the City's concerns. The City, however, did not experience the high health insurance costs that it had anticipated. Instead, the actual costs were substantially lower than projected. The Union argues that because the City saved this substantial cost through Union cooperation, the City ought to share those savings with its employees, particularly the firefighters. The City is, by implication from its position, saying that the Union should share only the difficulties, and not the benefits. The concessions the Union made because of a crisis in 1984 are now being demanded again in the City's final offer for 1985.

The Union contends that in the five cities it views as comparable, the firefighters of Kenosha rank last in all of the wage categories. The higher the job is ranked in these cities, the greater the difference in wages as compared with Kenosha. There is substantial inequity between the wages of firefighters in Kenosha and those in the other communities. Regardless of which of the two final offers is adopted, Kenosha will continue to rank last among the Union's five comparable communities.

Kenosha has historically been an area of high pay for production workers and for non-supervisory personnel. The average, privately employed worker in Kenosha is well paid.

The City's final offer does not reflect the fact that all other City employees throughout the State received an added benefit in the pension fund payment. Municipalities were required to assume an increased share of contributions on the employees behalf. Since firefighters did not receive this increase, they should not be equated with other City employees. The Union points to the settlements of other City employees to support its contention that the City's offer is inadequate. Local 71 ASFME settled for a first-year wage package of 3%, plus the 1% pension pickup. If the City's offer is adopted, the historic relation between the compensation received by policemen and firemen would be drastically altered. The police officers received a more generous offer than was made to the firefighters. Therefore, for the Union to accept the City's offer would be inappropriate.

Also in dispute in this proceeding is the proposal by the City to change the firefighter classification structure so that there would be five pay steps before reaching the top pay, instead of three steps presently in place. The Union seeks to maintain the current system and opposes the City's proposal. The proposal made by the City involves a structural change and as such is not an appropriate subject for a mediation/arbitration proceeding. Instead, the City's proposal ought to be brought up and decided at the bargaining table between the parties.

Also in dispute is the City's proposal limiting the cost of living allowance ("COLA"). The Union contends that no change should be made in the current COLA provisions. The City's offer proposes to guarantee flat rate payments of \$20.76 per month. The Union contends that the flat rate, regardless of the increase in the cost of living, defeats the purpose of a cost of living allowance. The provision was included in the contract in order to keep the employees in step with the actual cost of living changes made during the life of the agreement. The COLA is not, in the opinion of the Union, part of a wage improvement negotiation process. The Union shows that the COLA would have generated a \$332 increase, or a 1.3% increase in wages, during the term of the agreement.

The City proposes to alter the current leave of absence contract provisions. The City has not shown a need to support such a change. Only two firefighters in the history of the Department have ever requested, and been granted, leaves of absence. One of those firefighters never returned to the employ of the Department. The second has now returned to work in the Department. There has been no problem with securing a position for that returning employee. Consequently, there is no demonstrated need for a change.

The Union concludes its their final offer is the more reasonable of the two. Taking away or changing benefits, as proposed by the City, are terms which should be negotiated, not imposed by a Mediator/Arbitrator.

VIII. THE CITY'S POSITION

The City contends that its wage increase proposal is the more reasonable. A firefighter, under the Union's offer, would receive a 7.3% pay increase in 1986, assuming the maximum COLA payment would be made. With the same assumption, an Equipment Operator would receive a 7.2% increase, a Lieutenant a 7.1% increase, and a Captain a 6.9% increase. Increases of that nature are unreasonable, the City argues, because the consumer price index in the four months prior to submission of brief's reflected a variation of between a 2.7% and a 3.4% increase with average of only 3%. The City's proposed increase, which provides a 3.9% increase for a firefighter, a 3.9% increase for an Equipment Operator, a 3.7% increase for a Lieutenant, and a 3.6% increase for a Captain would be far more reasonable in light of the consumer price index actual taxation.

Under the law, the City has been compelled to pay an additional 1% of the employees' pension contribution. This additional cost increase is not being taken into consideration in the two proposals. Employees in the clerical and Public Works Department, who are represented by ASFME, received a 4% 1986 wage increase; building inspectors received a 3.9%; and school crossing guards received a 3.5%. The unrepresented managerial and administrative personnel of the City of Kenosha received a 3.9% increase from the City Council. The police department contract had not been resolved at the time of the writing of the briefs. No employees of the City of Kenosha whose 1986 wages had been determined at the time of the hearing on this dispute had received an increase in wages of over 4%.

The City indicates that if the police union does accept the City's final offer, the police officers would receive an increase 1% higher than the other City employees. There would be a number of significant "take-backs" in that settlement which diminish the value of the offer. There is no justification for the firefighters to ignore the other settlements made with City employee groups and demand an increase in excess of those granted to other City employees. All industry groups in Kenosha, particularly manufacturing, have had contract wage increases that have been significantly under 2%. Between October 1984 and October 1985, there was no increase in the average hourly earnings for private employers in Kenosha County. During that same time, statewide there was a 2.9% increase.

From February 1985 to February 1986, there was an actual decrease of 11.1% in private employee earnings. The City concludes that the wages in the City of Kenosha are actually going down, not increasing at this time. A Kenosha firefighter in 1985 had annual earnings of \$24,831, compared to the average Kenosha County private workman who earned of \$24,596, and to the average State of Wisconsin employee earning of \$23,192.

The City disputes the evidence of comparable wages that the Union has offered, contending that all that it has done is to multiply the year-end wage rate by 12, rather than add the actual monthly earnings for the year. Therefore, the figures were proposed by the Union are unrelated and inaccurate.

The City, at the same time, disputes the Union's claim that the wage information the City used for its proposed comparable communities was deceptive. The relative relationship of the Kenosha Firefighters to the other similarly situated cities is maintained in their final offer. Firefighters would continue to rank fifth out of the eight City comparables. They would receive 96.5% of the average wage of firefighters

in the other communities. In 1986, those communities increased their wages for firefighters by 4.3%. The City's offer of 3.9% is closer to the average increase than the Union's offer. An Equipment Operator would receive 95.1% of the seven-city average, a Lieutenant would receive 90.2% of the average, and a Captain would receive 86.7% of the average. At all ranks, Kenosha would maintain its past rankings and the relationship of its earnings to the average. Under the Union's proposal, the firefighters would receive the highest percentage increase, in annual earnings, granted by any of the comparable cities. The dollar amount of that increase would be 40% higher than the average granted by comparable cities.

The City stresses the decision should not be made based on the pay rate for the higher ranking captains and lieutenants, but should be based on the pay for firefighter position. There are 126 persons in the bargaining unit, and only 33 are at the higher rank. The City acknowledges that it does rank behind such "bedroom suburbs" as Waukesha, Wauwatosa and West Allis. It also indicates it is behind the City of Racine. It contends, however, that it ranks ahead of Beloit, Janesville and Madison, and that has done so consistently. To compare Kenosha with the communities in the Milwaukee suburban area alone is unfair because of the significant influence that the City of Milwaukee has on raising wages. Kenosha's relative position among the comparable cities has always been in the middle of that group. There is no reason for an arbitrator to change this relative ranking when it has been accepted for the past several years.

The cost of health insurance has been considerably higher for Kenosha than the health insurance and dental insurance in other communities. The City of Kenosha has been one of the leaders in providing such fringe benefits in the past. This has cost Kenosha substantially more money than the other communities have spent for that benefit. It should be recognized at this time and is an argument which supports the City's position.

Increasing the amount of time (i.e. wage steps) it would take to reach the maximum salary brings Kenosha more into conformity with comparable communities. Kenosha, under the Union's offer, would have the highest starting pay rate of any of the comparable cities and also the shortest length of time and fewest steps from start to the highest rate. There is no reason to have a high starting salary or shorter period of time in which to reach the maximum in order to secure new employees. Kenosha is having great economic difficulties. It's suffering, and the high rate of its unemployment is helping recruit persons to become firefighters by offering the security of public employment; high wages are unnecessary to attract employees in an economically depressed area.

The language regarding job placement on return from a leave of absence is di minimus. It would only avoid making the City recreate a position that it may have previously abolished in order to accommodate a fire department employee returning from a leave.

Kenosha has one of the highest unemployment rates in the State. In 1985, it ranked sixth highest among the State's 72 counties, with an 11.2% unemployment rate. It was only exceeded by Menomonie County and several small northern Wisconsin counties with a long history of economic depression. In March of 1985, Kenosha had "double-digit" unemployment with a rate of 13.4%. Only Racine among the comparable cities had a similarly high rate of unemployment.

The City of Kenosha's bad economic condition is related to the financial difficulty of American Motors. American Motors had a \$29 million loss in the first quarter of 1985. It was the only domestic auto maker that showed a decline in new car sales for that quarter. Rumors that American Motors would close circulated widely. American Motors and the United Auto Workers have begun to talk of wage concessions in order to save the workers' jobs at the Kenosha plant. The machinists of AMC had ratified a three-year contract containing wage reductions of \$.63-\$.70 per hour.

Other industrial companies in Kenosha have also had difficulties. American Brass was sold to a group in Bethel, New York. Major economic changes are being proposed for American Brass. Kenosha Memorial Hospital

has reduced its staff by 21 full-time positions. Service employees at Gateway Tech have agreed only to a 3% salary increase. There have been an increasing number of bankruptcies and closing of stores in Kenosha. All of this, in the City's view, supports the conclusion that the City's final offer, which is less generous, is the necessary choice at this time.

IX. DECISION

A. Determination of Comparables

This Arbitrator is strongly influenced by the prior decision involving the City of Kenosha reached by Arbitrator Stanley Michelstetter, in which determined that the most appropriate comparable communities are found in Southeastern Wisconsin. Racine, Waukesha, Wauwatosa and West Allis are the appropriate cities with which Kenosha should be compared. The greatest significance is the similarity of their population. Racine is slightly larger than Kenosha; Wauwatosa, West Allis and Waukesha are slightly smaller.

When examining the other proposed cities, other conclusions are reached. Madison is specifically rejected as a comparable community because of the great difference in its population with Kenosha and its more distant geographic location. Beloit is also rejected because of its significant difference in size, and the lack of geographical proximity.

Racine, Waukesha, Wauwatosa, and West Allis are all within 40 miles of Kenosha. The evidence overwhelmingly supports the conclusion that these cities should be selected as the comparable communities. The City of Janesville will also be included in the comparable group. Although, it is some distance from Kenosha, it differs only slightly in population and its economic base is almost identical to that of Kenosha. It would be difficult not to include the only other community in the state with a substantial automobile manufacturing industry in its borders, especially when it is similar in size.

B. Wage Proposals

The evidence received shows that Kenosha ranks last or next to last among the comparable cities for the wage scales of its fire department employees. Those rates, on an annual basis, are shown in the City exhibits for 1985:

1985 Annual Wage Rates

	<u>Firefighters</u>	<u>Equipment Operator</u>	<u>Lieutenant</u>	<u>Captain</u>
Janesville	\$23,805	\$24,638	\$28,799	\$29,943
Racine	25,631	26,186	28,423	30,013
Waukesha	27,660	27,872	29,795	-
Wauwatosa	27,311	28,704	30,175	33,406
West Allis	<u>27,627</u>	<u>28,565</u>	<u>30,967</u>	<u>34,550</u>
Average	26,407	27,193	29,632	31,978
Kenosha	24,831	25,227	26,319	27,723

The 1986 wages for the other departments, compared with the final offers in Kenosha, reveals the following:

1986 Annual Wage Rates

	<u>Firefighters</u>	<u>Equipment Operator</u>	<u>Lieutenant</u>	<u>Captain</u>
Janesville	\$24,622	\$25,895	\$29,836	\$31,021
Racine	26,797	27,376	29,736	31,378
Waukesha	28,643	29,424	31,454	-
Wauwatosa	28,643	30,104	31,646	35,035
West Allis	<u>28,594</u>	<u>29,565</u>	<u>32,051</u>	<u>35,759</u>
Average	27,460	28,473	30,947	33,298
City Offer	25,799	26,207	27,299	28,715
Union Offer	26,392	26,802	27,938	29,398

Kenosha is behind the comparable city average at all levels in 1985. In every case, it is not even close to the midpoint. It pays a higher rate only over than Janesville and in that case only for two classifications. The higher the rank, the further Kenosha falls behind.

When one examines at the 1986 offers, it is clear that even with Union prevailing, Kenosha would rank behind all cities except Janesville. Kenosha would exceed Janesville's rate in only those same two classifications. All the Union's offer does is to narrow the gap slightly.

What is particularly significant is that the other comparable cities are facing economic downturns similar to those the City alleges are occurring in Kenosha. Allis-Chalmers, formerly the premier business in West Allis, at one time had in excess of 10,000 employees. Today, the manufacturing component of the corporation barely exists. Racine also has faced a radical and dramatic restructuring of its local economy. Only two of Racine's mainstay industries are still prospering. Its reputation as an industrial behemoth having been substantially altered. The declining and changing nature of heavy industry in Wisconsin has not only effected Kenosha, but has also had a substantial effect on all other communities in the southeastern portion of the State. The state of the economy cannot justify treating Kenosha differently from other southeastern Wisconsin cities.

This Arbitrator concludes that the pay increase offer found in the final offer of the Union is more preferable to that proposed by the City.

C. Change in the Structure of Wage System for Firefighters

The City is proposing that the incremental steps necessary to reach the maximum pay for a firefighter be increased from three to five. Arbitrators have traditionally been very reluctant to allow such structural changes to occur in the mediation/ arbitration process. This Arbitrator has dealt with that issue in Dane County and The Dane County Attorney Association, Dec.No. 2182-A, where the union's offer proposing additional steps was rejected.

If other factors are substantially equal, it is more appropriate to select the final offer that makes no change in the wage structure and which is only confined to wage rates. Those other matters are more appropriately resolved by the parties across the bargaining table. A person, such as an arbitrator, usually does not have the complete understanding of the on-going relationship between the parties developed in past in their bargaining and negotiation. This view has been affirmed by this Arbitrator and many others on numerous occasions.

It is the conclusion of this Arbitrator that the final offer of the Union is the more reasonable proposal on this subject because it maintains the existing incremental steps necessary to secure the maximum salary in the firefighter classification.

D. Leave of Absence

The City proposed to change Section 1909 of the labor agreement relating to returns from leave of absences. This proposed change is a matter relating to the structure of the contract and is better dealt with at the bargaining table.

In the past 15 years, only two firefighters have requested and received leaves of absence; one never returned to employment within the City, the other has now returned. His return did not appear to cause any difficulty. For the City is to prevail on this point, it should have presented evidence demonstrating the necessity for adoption of this provision. The evidence brought forward does not require such a change. Therefore, regarding the leave of absence language, this Arbitrator concludes that the City has not met its burden, and the position of the Union is more preferable.

X. AWARD

Therefore, it is the conclusion of this Arbitrator that the final contract between the Kenosha Professional Firefighters Union and the City of Kenosha shall include and adopt the provisions of the final offer of the Union.

Dated this 19th day of December, 1986.



Frederick P. Kessler
Mediator/Arbitrator