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WISCONSIN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF BINDING ARBITRATION	)	INTEREST ARBITRATION
	)	
between	)	
	)	
International Association of Fire	)	Case 66 No. 36432
Fighters, Local 1021, Marshfield,	)	MIA-1089
Wisconsin	)	Decision No. 23732-A
-and-	)	
	)	
City of Marshfield, Marshfield,	)	
Wisconsin	)	October 22, 1986
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APPEARANCES

For International Association of Fire Fighters, Local 1021

- Leroy Waite, 5th District Vice President, IAFF
- Ron Steltenpohl, President
- Michael Huber, Executive Board Member
- Paul Adler, Executive Board Member
- Bernie Binning, Executive Board Member
- Michael Holleran, Executive Board Member
- John Zeidler, Executive Board Member

For City of Marshfield

- Dean Dietrich, Attorney, Mulcahy & Wherry, Wausau, Wisconsin
- Brad Karger, Personnel Director
- Clayton Simonson, Sr., Fire Chief

JURISDICTION OF ARBITRATOR

In late 1985, the representatives of the City of Marshfield (hereinafter referred to as the "City" or "Employer") and the International Association of Fire Fighters, Local No. 1021 (hereinafter referred to as the "Union" or "Association") exchanged proposals to initiate negotiations on a 1986 contract to replace their existing agreement. Thereafter, the Parties met on several occasions in an unsuccessful attempt to negotiate a successor agreement.

On January 16, 1986, the Employer filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to initiate final and binding arbitration pursuant to Sec. 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 firefighting personnel for the year 1986; that an informal investigation was conducted on March 19, 1986, and thereafter by mail, by David E. Shaw, a member of the Commission's staff; and that said Investigator having advised the Commission on May 29, 1986, that the Parties were at impasse on the existing issues as outlined in their final offers transmitted along with said Advice and that said Investigator had closed the investigation on that basis.

The Parties have not established mutually agreed upon procedures for the final resolution of disputes arising in collective bargaining, and further, that the Parties have not mutually agreed that the arbitration should not be limited to the last and final offers of each of the Parties.

The Commission having, on June 5, 1986, issued an Order that compulsory final offer arbitration be initiated for the purpose of

issuing a final and binding award to resolve an impasse arising in collective bargaining between the Parties on matters affecting wages, hours and conditions of employment of firefighting personnel in the employ of the City; and on the same date the Commission having furnished the Parties a panel of arbitrators from which they could select a sole arbitrator to issue a final and binding award in the matter; and the Parties advised the Commission that they had chosen Richard John Miller, New Hope, Minnesota as the arbitrator.

A hearing in the matter convened on Tuesday, August 19, 1986, at 1:00 p.m. in the general meeting room at the Public Library in Marshfield, Wisconsin. The Parties were afforded full opportunity to present evidence and argument in support of their respective positions. The Parties filed post hearing briefs which were exchanged through the arbitrator's office on October 2, 1986. The Parties elected to submit reply briefs which were received on October 14, 1986, after which the hearing was considered closed.

### POSITIONS OF THE PARTIES

Two issues remain before the arbitrator in this dispute which can be summarized as follows:

1. WAGES:

City Offer:

1/1/86	3.00%
7/1/86	1.00%
Actual Dollar Increase	3.50%
End Dollar Lift	4.00%

Association Offer:

1/1/86	2.00%
7/1/86	3.00%
Actual Dollar Increase	3.53%
End Dollar Lift	5.01%

2. SICK LEAVE PAYOUT:

City Offer:

Status quo (90 day accumulation, no payout).

Association Offer:

The City shall pay in cash to any Fire Fighter upon retirement or disability under Wisconsin Statutes, the sum equal to one fourth (1/4) of his accumulated unused sick leave. The above does not apply if the employee is discharged for cause. This is based on the prevailing hourly rate for a twenty-four (24) hour day at employee termination. Sick leave credits shall be transferable from one City Department to another.

### ANALYSIS OF THE EVIDENCE

The arbitrator evaluated the final offers of the Parties in light of the criteria set forth in Wis. Stats. 111.70(6) which includes:

- 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 wages, hours and conditions of employment of the employees involved in the arbitration proceeding 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 prices for goods and services, commonly known as the cost-of-living.
- F. The overall compensation presently received by the employees, 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.

A. The lawful authority of the employer.

This factor is not an issue in the instant proceeding. The lawful authority of the City permits the retention of rights and responsibilities to operate the City so as to carry out the statutory mandate and goals assigned to it consistent with the provisions of the collective bargaining agreement.

B. Stipulations of the parties.

Except for the two issues at impasse, the Parties have agreed to all other contract items for inclusion in the successor contract. The tentative agreements are contained in City Exhibit #2.

C. The interests and welfare of the public and the financial ability of the unit of government to meet these costs.

During the course of the arbitration proceeding, the City never alleged that it did not have the economic resources to fund either of the final offers submitted by the Parties. Therefore, the City has the necessary funds available to fund the Association's final offer which is more costly to the City than its own final offer.

D. Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public employment in comparable communities and in private employment in comparable communities.

Section 111.77(6)(d) of the Wisconsin Statutes requires the arbitrator to make a comparison between the Parties' final offers to the wages and fringe benefits of employees who perform similar services in comparable communities. Both Parties have agreed that Wausau, Stevens Point, Wisconsin Rapids and Marshfield are comparable communities. (Association Exhibits #7-13; City Exhibits #14-21). The Association has, however, in Association Exhibit #12 compared Marshfield's Fire Fighter sick leave provision with the sick payout programs at Antigo, Merrill and Rhinelander.

The Association has failed to provide any evidence to prove that Antigo, Merrill and Rhinelander have any common link to Marshfield. For example, Marshfield's population is 215% above the average population among the three additional cities chosen by the Association as comparable. (Association Exhibits #7, 12).

In addition, these three cities are not comparable to Marshfield when reviewing the 1985 Full Value, Property Tax, County Tax and Local Tax rates. (Association Exhibits #8-8A). The average actual market value of the three cities utilized by the Association is approximately 37% of the actual market value of Marshfield. The average total property tax of the three cities is approximately 37% of Marshfield's total property tax. The average county tax of the three cities is approximately 38% of Marshfield's county tax. The average local tax of the three cities is approximately 36% of Marshfield's local tax.

Substantial evidence exists to prove that the only comparable communities to Marshfield are Stevens Point, Wausau and Wisconsin Rapids. The average median household income of \$15,190 among Stevens Point, Wausau and Wisconsin Rapids compares favorably to Marshfield's median household income of \$15,850, the difference being only \$660. (City Exhibit #17). Marshfield's population is 75% of the average population among Stevens Point, Wausau and Wisconsin Rapids (City Exhibit #15) as contrasted to Marshfield being 215% of the average population among Antigo, Merrill and Rhinelander. Marshfield is approximately 68% of the average of Stevens Point, Wausau and Wisconsin Rapids in regards to equalized value. (City Exhibit #18). Similarly, by analyzing the tax levy rates, Marshfield is valued at 91% of the average among Stevens Point, Wausau and Wisconsin Rapids. (City Exhibit #19).

The above evidence proves that there is no substantive evidence to support the Association's inclusion of Antigo, Merrill and Rhinelander in the appropriate comparability group. The Association has failed to provide sufficient data to justify the expansion of the comparables beyond that of Stevens Point, Wausau and Wisconsin Rapids. Prior dicta by Arbitrator Robert J. Mueller in City of Marshfield (Fire Department), Case XX, No. 22-75, MIA-327, Dec. 15930-A (3/78) further supports the arbitrator's conclusion. Based upon the foregoing analysis and prior arbitral dicta, the best comparables for this case are the cities of Stevens Point, Wausau and Wisconsin Rapids.

A review of City Exhibits #23-27 and Union Exhibit #18 reveals that the City's final offer as well as the Association's final offer maintains Marshfield Fire Fighter's relative rank order for salary in 1986 at the benchmark positions of Recruit, Fire Fighter I, Fire Fighter II, Fire Fighter III and Lieutenant. However, it should be

noted that the Association's final offer is \$17 above the City's final offer at the Recruit benchmark, \$18 above at Fire Fighter I, Fire Fighter II and Fire Fighter III, and \$20 above at Lieutenant. Although the actual dollars received by the Marshfield Fire Fighters is virtually the same under both final offers, there is a vast difference in end rate lifts which causes the end rate of the Association's final offer to be between \$204-\$240 higher than the City's final offer on an annualized basis. End rates are very important to this case because future wage increases will be calculated from these end rates.

Union Exhibit #19 shows that Marshfield's package at the Fire Fighter III benchmark is \$12.66 less than the average monthly dollar increase of the comparable cities and the monthly increase is \$70.00 less than the average. With the Union's final offer at the Fire Fighter III position, Marshfield will receive the least in actual dollars for 1986 as shown in Association Exhibit #20A. Yet, the above results must be compared and contrasted with City Exhibits #23-27 which prove that the City's final offer most nearly reflects the average dollar and percentage increases of the comparable cities of Stevens Point, Wausau and Wisconsin Rapids on four of the five benchmarks. At every benchmark except Lieutenant, the City's final offer both in dollars and percentage increase is closer to the average settlement pattern than the Association's final offer. The difference under the Lieutenant benchmark is due to a one-time adjustment given by the City of Wausau to act as a "catch-up" raise to bring that position more in line with the rates being paid in the comparable cities. This explanation is important in supporting the City's final offer as there are only three Lieutenants among 27 in the unit. Thus, the City's final offer provides for an increase best reflective of increases received by similar employees in the three comparable cities of Stevens Point, Wausau and Wisconsin Rapids except for one position in one city. This is contrasted to the large increases generated by the Association's final offer which is well in excess of the average at the respective benchmarks of the comparable communities.

The average 1986 settlement pattern among the three comparable cities for wages only is 4.08%. (City Exhibit #21). The City's final offer with an end rate lift of 4.00% is only .08% below the average of these cities while the Association's final offer with an end rate lift of 5.01% is .93% above the average settlement pattern. Clearly, the City's final offer better reflects the settlement pattern and maintains rank and relative position as compared to the average monthly wage rate. Therefore, there is no justification for the Association's final offer which results in an excessive end rate lift of 5.01%.

City Exhibit #9 shows the 1986 percent increases for all unionized City employees. This document proves that the City's final offer is more reasonable with its end rate lift of 4.0% than the Association's end rate lift of 5.01%. If the Association's final offer is awarded, the Marshfield Fire Fighters will receive by far the highest percentage wage increase of any City group.

Similarly, City Exhibits #9, 22 and 13 indicate that the City's final offer is more consistent with the pattern of settlements in Wood County which includes the vast majority of the City of Marshfield and local private sector industries than the Association's final offer. In light of the other public sector settlements and the fact that local private sector increases are less than the City's final offer, the arbitrator must give greater credence to the City's final offer.

The City has proposed to maintain the status quo on the sick leave provision of 90 days accumulation with no payout upon retirement or disability. The Association, on the other hand, proposes that the City of Marshfield absorb the economic impact of

paying out one-fourth of all unused accumulated sick leave upon retirement or disability of any employee.

The potential liability per year for the sick leave payout has been estimated by the Union to be \$2,752 (Union Brief, p. 8) and by the Employer to be \$3,577 (City Exhibit #28 - corrected version). The potential liability to the City is not a factor in determining whether to sustain either Parties' final offer. The City never argued that it was unable to fund the Association's offer. The arbitrator must therefore decide this issue on other considerations.

One such consideration is that the Union's final offer on sick leave payout raises numerous questions of contract interpretation that are unresolved by review of its proposed language. It is unclear whether the employee must retire under the State retirement plan or receive this sick leave payout at any time of announced retirement from the City. The proposed language contains no eligibility requirements or conditions necessary to implement this language.

The Union in its reply brief suggests that these items can be worked out in future negotiations. This in itself identifies the flaws contained in the Union's final language. The arbitrator does not want to be in a position to award language that contains material flaws upon the promise that the details can be worked out later. All flaws should be worked out before the language is proposed rather than at some later time. No arbitrator should award language which will certainly generate grievances or litigation of disputes between the Parties.

As to the internal and external comparabilities, there is some credence to the Association's position, but in light of the vague language contained in its proposal, the arbitrator cannot find in the Association's favor on the sick leave payout issue. The City's DPW unit which is the City's largest bargaining unit containing 46 employees (City Exhibit #9) is the only internal comparable which has an unused sick leave payment system which is considerably more costly over an employee's tour of duty than the Association's proposal. (City Exhibit #30A; Union Exhibit #13). Two of the three comparable cities (Stevens Point and Wausau) have this benefit in more lucrative buyout provisions than the Association's final offer.

Assuming for the sake of argument that the Association's final wage offer was the same as the City's final wage offer or more similar than the one proposed by the Association, and assuming that the language contained in the Association's sick leave payout proposal had been clarified before being submitted to binding arbitration, the arbitrator would have found in favor of the Association's final offer. Unfortunately, this is not the case here and the arbitrator finds that under Section 111.77(6)(d) of the Wisconsin Statutes that the City's final offer is the most reasonable.

E. The average consumer prices for goods and services, commonly known as the cost-of-living.

The Consumer Price Index (CPI) represents the measure of the rate of inflation. Because the CPI measures the increases of all goods and services including fringe benefits, the total package cost of the Parties' offers is the most appropriate measure to use in comparison with the inflation rate at the time the contract expires. The 1985 contract expired on December 31, 1985. In December 1985, the rate of inflation at the national level as measured by the CPI for all urban consumers equalled 3.8%. (City Exhibit #32). The rate of inflation as measured by the CPI for urban wage earners and clerical workers equalled 3.6 % in December 1985. (City Exhibit

#32). With the City's end rate at 3.64% (City Exhibit #7) and the Association's end rate excluding sick leave payout at 4.55% (City Exhibit #8) or the end rate including sick leave payout at 4.95% (City Exhibits #8, 28 - corrected version), it is clear to see that both final offers exceed the rate of inflation as measured by the CPI for urban wage earners and clerical workers. If the arbitrator uses the the rate of inflation at the national level as measured by the CPI for all urban consumers, the City's offer is only .16% below the average while the Union's final offer is considerably higher by .75% (excluding sick leave payout) or 1.15% (including sick leave payout). The City's final offer is clearly more reasonable under both measures of inflation.

F. The overall compensation presently received by the employees, 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.

The Association's rationale for support of its final offer stems, in part, from the fact that Marshfield Fire Fighters did not receive the 1% additional contribution to the Wisconsin Retirement Fund (WRS) that other City employees received. Therefore, the Association argues that the City's total package offer is less than that given to other City employees.

The 1% WRS contribution increase is not relevant to this case because the Fire Fighters did not suffer a loss in retirement benefits with the increase in Employer contribution for other City employees. In fact, City Exhibit #10 shows that even though there was no 1% in the contribution rate for Fire Fighters, the City still pays out the greatest total percentage rate, 27.9%, (times wages) for Fire Fighter benefits when compared to other City employees. Clearly, the Fire Fighters are at no disadvantage compared to other City employees relative to retirement benefits received. As such, the arbitrator cannot find any rationale basis to find in favor of the Union's final offer in this regard.

It is the Union's position that the City of Marshfield is attempting to penalize its members for the recent United States Supreme Court decision applying the Fair Labor Standards Act (FLSA) in regards to overtime. The FLSA was not intended to be a cost factor against employees. The provisions suggest that the wage received as a fair settlement for a bargained position should not be reduced for cities in order to be in compliance with the Federal Legislation. (Union Exhibit #23). The evidence is devoid of any action taken by the City of Marshfield to penalize Union members for compliance under the FLSA. In fact, no effort or change was made by the City to reduce its final offer because of the FLSA requirement as suggested in the Watertown Fire Fighters Local 887 arbitration settlement.

G. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

The most recent salary and total package settlements to date, have been reported and incorporated into the decision of the arbitrator.

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.

This factor was not given great weight because such other factors normally or traditionally taken into consideration in the determination of the impasse items were already considered in the previous statutory factors.

In conclusion, the City's final wage offer maintains the rank and relative dollar amount above/below the average among the benchmarks for the comparable cities of Wausau, Wisconsin Rapids and Stevens Point. The City's final wage offer also best maintains internal, municipal and private sector comparability wage increases for 1986. The City's final total package provides a cushion against the cost of living. The Association has failed to meet its burden of proof changing the status quo by substantially altering the current sick leave benefit to incorporate a sick leave payout fringe benefit which contains vague language. Based upon the entire record, the final offer of the City is obviously the more appropriate and reasonable final offer.

AWARD

Based on the above evidence and the entire record, the City's final offer best satisfies the factors required to be considered by the arbitrator under the statutory criteria. Therefore, any and all stipulations entered into by the Parties and the City's final offer shall be incorporated into the 1986 collective bargaining agreement.

  
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Richard John Miller

Dated this 22nd day of 1986  
New Hope, Minnesota