STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of FIREFIGHTER'S LOCAL 1801, IAFF, CUDAHY For Final and Binding Arbitration Involving Nonsupervisory Firefighting Personnel in the Employ of the CITY OF CUDAHY	Case 62 No. 41431 MIA-1363 Decision No. 25961-A

Appearances:

Lawton & Cates, S. C., Attorneys at Law, by Mr. Richard V. Graylow, appearing on behalf of the Association.

Mulcahy & Wherry, S. C., Attorneys at Law, by Mr. Robert W. Mulcahy, appearing on behalf of the Employer.

ARBITRATION AWARD:

On April 19, 1989, the Wisconsin Employment Relations Commission appointed the undersigned Arbitrator, pursuant to Section 111.77 (4) (b) of the Municipal Employment Relations Act, to issue a final and binding award to resolve an impasse arising in collective bargaining between Firefighter's Local 1801, IAFF, Cudahy, referred to herein as the Association or the Union, and City of Cudahy, referred to herein as the Employer or the City, with respect to certain issues as specified below. The proceedings were conducted pursuant to the provisions of Wis. Stats. 111.77 (4) (b) which limits the authority of the Arbitrator to the selection of the final offer of one party without modification. The proceedings were conducted at Cudahy, Wisconsin, on July 27, 1989, at which time the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. The proceedings were transcribed and briefs and reply briefs were filed in the matter. Final briefs were exchanged by the Arbitrator on October 18, 1989. Thereafter, on October 24, 1989, Counsel for the Association filed objections to the inclusion of any and all references made by the Employer to the City of Greenfield settlement. On October 26, 1989, Counsel for the Employer responded, asserting that the submissions with respect to the City of Greenfield were appropriate, pursuant to the statutory criteria which directs the Arbitrator to consider changes in circumstances during the pendency of the proceedings. Counsel for the Employer requested a ruling on the matter. On November 1, 1989, the Arbitrator advised the parties that he was withholding ruling and would consider the matter as part of the full opinion in the case.

THE ISSUES:

The issues as reflected in the final offers of the parties are:

I. ARTICLE 18 - WAGES

CITY OFFER

1/1/89 - 3% across-the-board
7/1/89 - 1% across-the-board
1/1/90 - 3% across-the-board
7/1/90 - 1% across-the-board

ASSOCIATION FINAL OFFER

1/1/89 - 4% across-the-board
1/1/90 - Wage Reopener

II. ARTICLE 23 - MEDICAL AND HOSPITALIZATION INSURANCE

The Employer proposes to revise the entire article to read as follows:

> The City will pay up to $131.39 per month toward the single plan and up to $363.61 per month toward the family plan hospital and surgical insurance for all employees. Such hospital and surgical insurance shall be provided to the employee thirty (30) days from the date of his employment. No employee shall make any claim against the City for additional compensation in lieu of or in addition to the insurance premiums paid because he does not qualify for the family plan.
>
> In no event will the City pay toward a premium if it results in duplicate coverage for the employee under another City plan. Annually, each employee shall sign a form certifying that they do not have coverage available and paid for by the City.
>
> The City may, from time to time, change insurance carriers or self-fund health care as long as comparable or greater coverage is maintained. Prior to adopting any new policy, a representative from the Association will be given the opportunity to review the proposed policy and submit comments to the City.
>
> Medical and hospital insurance coverage shall be available to all retired full-time employees. This coverage shall be identical to the coverage provided to the regular full-time employees. Effective January 1, 1987, the City will pay either 75% of the aforementioned City contribution to the insured plan or 100% of aforementioned City contribution to the HMO plan or WPS-HIP plan, if offered, at the retiree's option.
>
> The City will continue to pay 50% of the cost of hospital and surgical care insurance premiums for employees who retired prior to January 1, 1987, up to eligibility for Medicare provided said employee is not employed elsewhere and receiving hospital and surgical care paid for by his employer.

The Association proposes to retain the status quo of the predecessor Collective Bargaining Agreement which reads at Article 23:

> The City will pay the full amount of the single and family plan hospital and surgical insurance for all employees. Such hospital and surgical insurance shall be provided to the employee thirty (30) days from the date of his employment. No employees shall make any claim against the City for additional compensation in lieu of or in addition to the insurance premiums paid because he does not qualify for the family plan.
>
> The City may, from time to time, change insurance carrier or self-fund health care as long as comparable or greater coverage is maintained. Prior to adopting any new policy, a representative from the Association will be given the opportunity to review the proposed policy and submit comments to the City.
>
> Medical and hospital insurance coverage shall be available to all retired full-time employees. This coverage shall be identical to the coverage provided to the regular full-time employees. Effective January 1, 1987, the City will pay either 75% of the cost of the Blue Cross "standard plan", 100% of the HMO plan, or 100% of WPS-HIP plan, at the retirees' option. The City will continue to pay 50% of the cost of hospital and surgical care insurance premiums for the retired employees up to the age of Medicare provided said employee is not employed elsewhere and receiving hospital and surgical care paid for by his employer.
>
> HIP - Effective 1/1/87, employees will be allowed to join Wisconsin Physicians Service (WPS) Health Incentive Plan (HIP) 100% funded by the City.

III. JURY DUTY

The City proposes the status quo. The Association proposes a new article to read as follows:

> In the event an employee is summoned for jury duty, and this commitment falls on an employee's regularly assigned duty day, the city shall release the employee for the jury duty. Once the employee is finished with jury duty for that day, he will return to work. The employee shall be entitled to his regular fire department salary, but must return to the City any monies earned for jury duty, excluding travel and parking fees.

IV. SUBPOENA PAY

The Employer proposes the status quo. The Association proposes a new article dealing with subpoena pay as follows:

> In the event an employee is subpoenaed for a duty related incident (including ambulance calls) while off duty, said employee will be compensated at the current overtime rate for the time the employee is to appear, witness standby, all travel time, parking and mileage

at a rate of 24¢ per mile if the employee provides their own transportation. If the employee is on duty when the employee has to appear, the employee shall be allowed to appear at no cost or loss of pay to said employee. The City shall provide transportation or pay the 24¢ per mile. The employee shall be required to return to the City any monies earned for subpoena duty.

POSITIONS OF THE PARTIES:

POSITION OF THE ASSOCIATION:

The Association argues that its proposed external comparables should be adopted rather than those of the Employer, contending that the external comparables should be comprised of South Milwaukee, Greenfield, Oak Creek, Greendale, West Milwaukee, and excluding the City of St. Francis and the City of Franklin.

The Association further argues that the private sector comparables relied on by the City should be rejected, because they were given no weight in prior arbitrations when the Association attempted to draw those types of comparisons.

The Association also argues that comparisons with the School District of Cudahy should be rejected as a comparable for the same reasons that the Association has argued that the private sector comparison should be rejected.

The Association further argues that events which occurred subsequent to the filing of the petition capture events which are extraneous, arguing that reasonability of the parties' offers must be determined at the time the petition for arbitration is filed. Because the petition for arbitration was filed on December 16, 1988, the Association argues that events that occurred after that date are not probative of reasonability of final offers.

The Association points out that the parties agree that the primary issue in dispute in this matter is the health insurance premium issue, and that the other three issues pale in importance to the health insurance issue. With respect to the health insurance issue, the Association points to two prior attempts to cap health insurance premiums by this Employer in prior arbitrations. In both prior arbitrations, June 17, 1976, and February 9, 1983, Arbitrators Weisberg and Petrie respectively rejected the Employer proposals to cap the insurances. The Association further argues with respect to health insurance premium caps that neither the internal nor external comparables support the Employer offer, and, therefore, the Association offer should be adopted. The Association also argues that the Employer here has offered no quid pro quo for the cap it proposes on health insurance premiums.

With respect to the wage dispute, the Association argues that its offer will preserve the relative ranking of the firefighters among the comparables. The Association asserts that there is little difference between the Employer and Association offer in the first year (4% vis a vis 3% January 1 and 1% July 1), and that its offer of a wage reopener in the second year is more reasonable because it gives the parties an opportunity to evaluate the cost of living increases which took place during 1989 rather than limiting the increase to 4% in the face of what may be a significantly higher inflation rate. The Association also points to the increase received by the Fire Chief of 8.7% and to the aldermen salaries of $6,000. a year, which ranks them second among the comparables.

With respect to the jury duty pay and subpoena pay issues, the Association argues that while these issues are important to the Association and its members, neither have significant impact on the outcome of these proceedings.

In response to the City's arguments that bargaining history and the Association's view on health insurance is both selfish and irresponsible, the Association points to the Association agreement for enrollment in HMOs at a 25% level in 1984; and to its agreement to change health insurance coverage from Blue Cross to WPS in 1989, both of which, the Association asserts, saved significant sums of money for the Employer.

In response to the City's proposed comparable communities, the Association asserts that the City's grouping of comparables should be rejected, arguing that the City's grouping of comparables has been rejected by prior arbitrators, and that their comparable grouping creates a distortion, because the City picks, chooses and presents only isolated information and fails to make comparisons of total packages or comparisons of journeymen firefighter rates.

In response to the Employer arguments with respect to jury duty pay, the Association argues that the Employer's argument that firefighters can trade shifts, use holidays or take vacation if jury duty is a long drawn out affair is not on point, contending that firefighters should not have to do so, because both internal and external comparables support the inclusion of jury duty pay for the firefighters.

With respect to subpoena pay, the Association responds to the Employer argument in a similar fashion as it responded to the Employer's arguments on jury duty pay. The Association further argues with respect to subpoena pay that, because it is the Chief's testimony that it is the policy of the City to pay firefighters for time spent under subpoena for duty related incidents, the policy should be definitized in the Collective Bargaining Agreement.

POSITION OF THE EMPLOYER:

The Employer argues that its proposed comparables should be adopted, which include Franklin, Greendale, Greenfield, Oak Creek, St. Francis and South Milwaukee. The Employer argues that the City of St. Francis should be included as a comparable, because of its contiguous position to the City of Cudahy, and because the City of St. Francis' size and similarity of economic interest with the City of Cudahy require a conclusion that it is a comparable community. The City further contends that the City of Franklin should be considered a comparable because Franklin and Cudahy have approximately the same population, and that property taxes collected in the City of Franklin were $19,677,492 compared to tax collections of $15,222,461 in the City of Cudahy. The Employer argues that Franklin is more comparable to the City of Cudahy than are two other municipalities on which both parties rely, i.e., Greenfield and Oak Creek. The City further argues that Franklin should be included because of its close geographic proximity, its same size, its similar economic base, and because of a mutual aid agreement in existence between the two fire departments.

The City argues that the criteria of interest and welfare of the public supports its offer, pointing to Wis. Stats. 62.11 (5), reading in relevant part: "The Council . . . shall have the power to act for the government and good order of the City, for its commercial benefits, and for health, safety, and welfare of the public . . . .", the City arguing from the foregoing that its offer is the more appropriate because it takes into consideration the following:

1. Cudahy has seen the smallest increase in property values compared to the comparables from 1974 through 1988;

2. Property tax revenues increased on an average of 204% among city proposed comparables between 1974 and 1988, whereas, the City of Cudahy tax revenues increased by only 68% during that same period;

3. The comparables espoused by the City had full value tax rate increases of approximately 10.1% from 1974 to 1988 compared to a 3.5% increase for the City of Cudahy;

4. The City of Cudahy, residential and the property full valuation for the City of Cudahy for the fourteen years from 1974 through 1988 establishes an increase of residential valuation of 117% compared to 201% among the average of the City comparbles; the commercial valuation increased by 198% in the City of Cudahy compared to 319% increase among the average of the City proposed comparables; the manufacturing evaluation decreased by 5% in the City of Cudahy compared to an increase of 117% among the average of the City proposed comparables, and the total real estate evaluations increased 114% in the City of Cudahy compared to an increase of 119% among the average of the City proposed comparables.

The City further argues that the interest and welfare of the public is best served by the adoption of its offer because the Association testimony and exhibits which purport to show a $2,614,000 surplus are erroneous and that the testimony establishes that the City auditors have cautioned that their surplus is dangerously low, and they are on the threshold of having to borrow for cash flow purposes.

With respect to the wage dispute the City argues that its final offer is supported by settlements received by other public sector employees, and that the wage rates generated by the final offer of the City makes the firefighter wage rates comparable. The City further argues that the internal comparables support percentage of settlement offered by the City here. The City contends that both the wage and health insurance benefits received by the fire unit surpassed the rate of inflation, and, therefore, the cost of living criteria supports the final offer.

With respect to health insurance caps, the City contends that the bargaining history and the Association position on health insurance are both selfish and irresponsible, the City contending that references to Blue Cross/Blue Shield which remain in the predecessor Agreement have not been deleted, even though Blue Cross/Blue Shield have refused to provide coverage for 1989. The City further argues that should Blue Cross/Blue Shield again become available in 1990 or subsequently, it would be obligated to recognize the premium references in the predecessor Agreement language relating to Blue Cross/Blue Shield. The City also argues that its proposed comparables support a dollar cap on insurance premiums because five of the six comparables espoused by the Employer provide for dollar caps and only the City of Greenfield has 100% health insurance premiums provided for its employees. The City further argues that it had to bring the health insurance caps to the Arbitrator, because "the Union adamantly refused to discuss the issue of rising health care costs" in collective bargaining. The Employer also argues that the internal comparables support its final offer in that in 1989 all other groups experienced a change in their health insurance language, either the carrier specification was changed from Blue Cross/Blue Shield to WPS-HIP, and a dollar cap was administered, or only the primary carrier specification was changed from Blue Cross/Blue Shield to WPS-HIP. The Employer points to the testimony of William Brazzoni, President of Group Health Planning, Inc., which establishes that significant increases are being experienced in health insurance currently. The Employer argues

that Brazzoni's testimony that most corporations in the Milwaukee area are currently attempting to control costs by having the employees chip in part of the premium or going to higher deductibles, supports its final offer. The Employer argues that Brazzoni's testimony supports the proposition that employees become more sensitive and cost conscious when they contribute to the cost of health insurance premiums because their personal efforts dictate how much money they must pull out of their own pockets to cover the premium cost.

The Employer also argues that its offer is supported by other expert opinion in the area of employee benefits, pointing to the research articles on health insurance costs and containments contained within its Exhibit Nos. 46A through 57 C. From all of the foregoing, the City contends that it seeks to 1) remove Blue Cross/Blue Shield as the main carrier; and 2) to state the full insurance premium of the 1988 Blue Cross/Blue Shield rates as the dollar amount in the Contract. The City contends that in so doing, it will inform employees in a meaningful manner of the cost of its health insurance benefits and help everyone address the serious issue before it grows worse.

With respect to jury duty and subpoena pay, the City argues that the Association has failed to meet its burden of proof in that they have failed to produce a list of employees with the respective dates of occurrences and examples where they were unable to provide for their civic duty because of a lack of a jury duty pay provision in the Agreement. The City further contends that because of the lack of numerous examples, the impact upon employees due to the Contract's silence with respect to jury duty pay and subpoena pay is deminimus. The City argues that because both jury duty and subpoena pay can be covered by trades among unit employees; and because shift trades are a commonplace thing which occur regularly; it is reasonable to expect that the requirement to serve in either capacity can adequately be covered in that manner. Finally, the Employer argues with respect to jury duty and subpoena pay issues that there has been no quid pro quo offered by the Association to support the change it now seeks.

In response to the Association argument, the Employer submits the following arguments:

1. The Association's attempt to ignore Section 111.77 (6) is irresponsible, asserting that events occurring after the filing of the petition (December 16, 1988) must be considered under criteria g, which requires the Arbitrator to consider changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

2. The Association's argument that private sector data should be disregarded runs contrary to criteria d, which requires a comparison of wages, hours and conditions of employment of 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.

3. With respect to the external comparable pool, the City contends that Arbitrator Zeidler in 1977 included St. Francis in his decision involving the City of Cudahy Fire Department (Dec. No. 15118-A, 4/25/77) and that Arbitrator Petrie also accepted the City of St. Francis in his decision in 1983.

4. With respect to the Union argument that it is improper to include school district comparisons in the City of Cudahy, the Employer points to criteria d and h

which require the comparison of wages, hours and conditions of employment in comparable communities, and to criteria h which requires the Arbitrator to consider other factors not confined to the foregoing enumerated criteria 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.

5. In response to the Association argument that various alternate approaches to the matter (health insurance cost containment) might properly be addressed by the parties "across the table", the Employer contends that the foregoing argument is preposterous in view of the record testimony from both Employer and Association witnesses, which the Employer asserts establishes that the Employer attempted to discuss health insurance alternatives with the Association, and they refused to listen to and/or discuss the subject. The Employer also argues that any assertions that the Association made that the record supports 100% contribution on health insurance premium among its comparables is not accurate, asserting that in 1989 the Franklin, Greendale, Greenfield, Oak Creek, St. Francis and South Milwaukee contracts all provide for dollar caps. The City argues that the Employer final offer fulfills the change in status quo criteria, in that the final offer has reasonably uniform support among the comparables and that there exists a compelling need for the change. The City argues with respect to a quid pro quo that it was unnecessary to provide one because based on the internal wage comparisons and the blatant refusal to negotiate on health insurance there was no point in offering an additional quid pro quo since the Union rejected all health insurance proposals and demanded arbitration. Why reward the bad faith bargaining tactics by the Union, the Employer asks.

DISCUSSION:

Wis. Stats. 111.77 (6) set forth the factors to which the Arbitrator shall give weight in determining which party's final offer should be adopted. The factors are:

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.

The Arbitrator, therefore, will consider the record evidence and the parties' arguments in light of the statutory criteria found at 111.77 (6) a through h.

Prior to considering the substantive issues contained in the final offers of the parties, it is necessary to address certain preliminary issues which have been raised. They are:

1. Can events occurring subsequent to the filing of the petition for arbitration be considered?

2. What are the appropriate external comparables for the firefighters employed by the Employer?

3. Can private sector comparables be considered, and if so, what weight, if any, should be accorded?

4. Are comparisons with school teachers in the same community appropriate, and if so, what weight, if any, should be accorded?

THE PROPRIETY OF POST PETITION EVIDENCE

The Association argues that the reasonability of the parties' offers must be determined at the time the petition for arbitration is filed, and that events after the filing are not probative of reasonability. The Association cites Forest Hill Foundry Co., 1 LA 153 (1946) and Bethlehem Steel Co., 29 LA 635 (1957) which hold that post filing events are not admissible before rights arbitrators. The Association also relies on Green V. Ashland Water Co., 101 W 258 (1898) in support of their contention that events occurring subsequent to an act are inadmissible. The citations relied on by the Association support the proposition that in rights arbitrations and in courts of law events occurring subsequent to an act or events which triggered a grievance or lawsuit are not admissible or proper for consideration in determining the outcome of a dispute. This, however, is not a rights arbitration or a lawsuit in a court of law. The proceedings in interest arbitration under the statutes at 111.77 (6) direct the Arbitrator to give weight to certain factors. Among those factors are criteria found at 6 (g): Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings. Thus, the Legislature, when it enacted 111.77 directed arbitrators to consider changes in circumstances that occurred subsequent to the filing of the petition for arbitration. In view of the foregoing statutory mandate, the undersigned concludes that he is duty bound by the factors enumerated in the statute to consider the changes that have occurred subsequent to the filing of the petition, and up until the time that the proceedings are finalized.

Having arrived at the foregoing conclusion, however, does not dispose of the entire dispute, because the Employer has submitted as part of its reply brief information with respect to the terms of settlement involving the City of Greenfield and its firefighters, which occurred on September 13, 1989, a date subsequent to the date the hearing in this matter was closed on July 27, 1989. The inclusion of this information in the record was opposed by the Association in a postbrief communication

to the Arbitrator dated October 24, 1989. Counsel for the Employer supplied a response to the Association objection in a letter dated October 26, 1989. On November 1, 1989, the undersigned advised the parties that he was withholding ruling with respect to this Association objection and would dispose of the objection in this opinion.

The Employer has argued that because there was no mutual understanding with respect to posthearing submissions, and because there were no instructions from the Arbitrator dealing with the subject of posthearing submissions, the submission of additional information for the Arbitrator's consideration is appropriate under criteria 111.77 (6) (g) because they constitute changes in circumstances during the pendency of the arbitration proceedings. To rule on the Association objection to the submission of the Greenfield evidence, it is necessary to determine when the "proceedings" are no longer pending in this matter. It is the opinion of this Arbitrator that for the purposes of determining when it is no longer appropriate to submit additional evidentiary submissions because the "proceedings" are no longer pending, the controlling date is the date on which the formal evidentiary hearing is completed, or the date subsequent to that where the parties have agreed to make posthearing submissions. Here, there was a formal evidentiary proceeding which has been recorded in a verbatim transcript of those proceedings. At page 213 of those proceedings, the Arbitrator declared at 4:38 p.m. on July 27, 1989: "The hearing is closed." Based on the foregoing, the undersigned is of the opinion that it is inappropriate to attempt to submit additional evidence after the hearing is formally closed, except for those evidentiary submissions which were arranged for at hearing, where the parties agreed that the record should be held open for a period of a week during which time the parties would be able to submit posthearing exhibits. In fact, the Employer submitted posthearing exhibits into this record which were transmitted to the undersigned on August 4, 1989, and the Association did so in a letter transmitted to the Arbitrator on August 15, 1989. On August 23, 1989, Counsel for the Employer advised that he had no objection to the receipt of the Association's posthearing submission, and both the Employer and Association exhibits which were submitted up until that date were received into the record by the Arbitrator and the parties were so informed.

With respect to the Employer's attempted submission of the Greenfield Firefighter settlement which occurred in September, 1989, that settlement occurred after the record in this matter was closed, and the Association has objected to its submission. Consequently, its submission falls under a different set of circumstances than the other posthearing evidentiary submissions and exhibits which the Arbitrator received into the record. Because the hearing was closed on July 27, 1989, with the aforementioned exceptions; and because the attempted evidentiary submission with respect to the Greenfield settlement was made subsequent to the time the record was closed, and did not fall within the scope of the foregoing exemptions; the undersigned now concludes that the evidence with respect to the Greenfield settlement has been improperly submitted subsequent to the close of the hearing, and it will not be considered in this record.

THE COMPARABLES

What is disputed here is whether the City of St. Francis and the City of Franklin should be included among the comparables for the purpose of comparing the final offers of the parties. The City includes the City of St. Francis as a comparable, and the Association opposes it. In support of its position, the Association cites Rock County Deputy Sheriff's Association, WERC Dec. No. 25698-A (5/1989); and Mayville Education Association, WERC Dec. No. 25459-A (2/1989). In

Rock County and Mayville, the undersigned held that once a comparability pool has been established, they should not be tampered with, lest the inclusion or exclusion of additional comparables from the original comparability pool might undermine the stability of the collective bargaining process. The Association argues that the foregoing conclusions require that this Arbitrator adopt the Association's proposed comparables which would exclude the City of St. Francis and the City of Franklin. The undersigned continues to believe that once comparables have been established, it is in the best interest of the stability of the bargaining process that they not be tampered with. There are exceptions to every rule, however, and one of the exceptions the Arbitrator believes necessarily must be considered is whether there have been sufficient changes in circumstances which would warrant the inclusion or exclusion of a comparable. Here, however, the undersigned is satisfied that prior arbitrators have included the City of St. Francis in the comparable pool. Arbitrator Petrie opined at page 12 of his decision:

> In addressing attention to the very important intra-industry comparisons criterion, it must be noted that the parties were in full agreement with respect to the comparability of Cudahy Firefighters with the cities of Greendale, Greenfield, Oak Creek, South Milwaukee and West Milwaukee. The City of St. Francis has been regarded as less persuasive in past arbitrations and, while it should not be wholly disregarded, the Undersigned also feels that it should be regarded as less persuasive than those cities referenced above.

Arbitrator Zeidler, at page 10 of his decision, found:

> . . . . the Arbitrator believes that the inclusion of St. Francis in the listing is appropriate as to both location and size. This is so especially since West Milwaukee is also included. West Milwaukee presents a unique situation with a relatively large Fire Department with only 3,787 population. St. Francis exhibits a residential and industrial pattern similar to the other municipalities on the list.

Later, in his decision at page 13, Arbitrator Zeidler included data from the City of St. Francis in compiling average base wages and total compensation. From the foregoing, it is clear that prior arbitrators have included the City of St. Francis in the comparable pool. The undersigned, consequently, finds that St. Francis is appropriately included for the purpose of comparing data in this dispute. While Arbitrators Stern and Weisberger rejected St. Francis as a comparable community, those arbitrations preceded the arbitration decisions of Zeidler and Petrie, which included St. Francis among the comparables.

The Association also opposes the inclusion of the City of Franklin as a comparable. The undersigned finds that the City of Franklin is indeed a comparable, notwithstanding the fact that it has not been included in the comparable pools in prior arbitrations. While it is true once comparability pools have been established they should not be tampered with unless there are good and persuasive reasons, here, those reasons exist for the inclusion of the City of Franklin. The evidence establishes that the City of Franklin has almost exactly the same population; that they are in close geographic proximity; that there exists a similar economic base; and that they are part of the mutual aid agreement to come to each others aid in the event of severe fires. Furthermore, Arbitrator Malamud, in deciding the City of Franklin Fire Department dispute in September, 1984, determined that Cudahy was a comparable community to the City of Franklin, and he also included the City of

St. Francis in that same comparability pool. From all of the foregoing, the undersigned is satisfied that the City of Franklin should be included among the comparables, and, therefore, includes them in the comparable pool.

The Association also includes West Milwaukee in its proposed comparable pool and the City does not. The Arbitrator is satisfied that there is no reason to exclude West Milwaukee from the pool of comparables because it was determined a comparable in prior arbitrations and there is no reason to exclude West Milwaukee at this time. The comparables will, therefore, include Franklin, Greendale, Greenfield, Oak Creek, St. Francis, South Milwaukee and West Milwaukee.

PRIVATE SECTOR COMPARISONS AND SCHOOL DISTRICT COMPARISONS

The Association objects to drawing comparisons with the private sector and to drawing comparisons with the school district of Cudahy for the purpose of determining which final offer should be accepted in this dispute. The Association argues that prior arbitrators have excluded attempts on the part of the Association to make private sector comparisons, and comparisons to employees within the school district of Cudahy. The undersigned is persuaded that the statutory criteria requires that comparisons with the private sector and with school district employees be made. Criteria 6 d requires the Arbitrator to consider a 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. An arbitrator simply has no authority to ignore the dictates of the statute. Thus, comparisons are appropriate where evidence is available to make those comparisons. While comparisons of wage rates of firefighters compared to wage rates of private sector employees who are not firefighters or school district employees who are not firefighters cannot be made, other conditions of employment can be taken into consideration. By reason of the statutory mandates, then, it is appropriate to consider patterns of settlement in the private sector and patterns of settlement among organized school district employees, and it is also appropriate to consider a comparison of fringe benefits and practice with respect to premium participation on the part of the Employer by reason of the foregoing criteria. It follows from the foregoing that those considerations will be made.

THE SUBSTANTIVE DISPUTE

The parties stipulate that the major issue in dispute between them is the health insurance proposal of the parties. At hearing, the parties have recognized that the wage proposals are close. Furthermore, the subpoena pay proposal and the jury duty pay proposal of the Association are not proposals that are so significant that they will impact the determination as to which party's final offer should be adopted. The undersigned, therefore, will give primary consideration to the health insurance issue, and will treat that matter first.

THE HEALTH INSURANCE ISSUE

The principle modification to the Collective Bargaining Agreement proposed by the Employer relating to the insurance issue is the Employer proposal that the amount of contribution for premiums payable for health insurance of the employee be fixed at a dollar amount rather than the language of the predecessor Agreement which provides that the City will pay the full amount of the single and family plan hospital and surgical insurance for all employees. The dollar amounts proposed by the Employer are up to $131.39 per month for the single plan, and up to $363.61

per month toward the family plan. The dollar amounts proposed by the Employer are in excess of the highest premiums now charged by any of the insurance providers. In order to determine a preference for the final offer of one of the parties, we will consider the traditional comparisons. The traditional comparisons to be considered are industry practice (external comparables), internal comparables, private sector practice relating to health insurance contributions by private sector employers, and the practice of other municipal employers.

Turning first to the question of the external comparables, the undersigned has reviewed all of the evidence adduced at hearing by both the Association and the Employer. The Association exhibits with respect to the external comparables are set forth in Union Exhibit No. 32, which purports to show the practice with respect to premium contributions among the Association proposed comparables. Employer Exhibit No. 33 provides the same information with respect to its proposed comparables. The undersigned has determined that the comparables should include the municipalities of Franklin and St. Francis, in addition to the comparables advocated by the Association. We will now look to the practices of those communities. Employer Exhibit Nos. 36A and 36C establish that at the time of hearing, only the City of Greenfield and the City of Franklin provides contract language which specified that the Employer would pay 100% of premium for health insurance on behalf of its Fire Department employees. The City of Oak Creek and the City of St. Francis provided for a dollar amount equal to the full premium. The City of Greendale and the City of West Milwaukee provided for a contribution of 100% of the highest HMO protection available. The City of South Milwaukee provided for a contribution of 105% of the lowest rate of any health insurance provider. From the foregoing, we conclude that the majority of comparables provide for either a cap of less than 100% of the regular health insurance premium, or a cap of a dollar amount equal to the full premium. At the time of hearing, only two of the seven comparable communities provided language in their agreement which guaranteed to a continuation of 100% of premium. While two other communities, St. Francis and Oak Creek agreed to provide a dollar amount equal to the full premium during the life of the agreement, they, nonetheless, provide dollar cap on the amount of the employer insurance premium contribution, as does the Employer proposal in this dispute. Because the Employer proposal here specifies a dollar amount considerably in excess of the current premiums being charged, the undersigned concludes that the dollar amount in Oak Creek and St. Francis are more akin to the Employer proposal here than they are to the perpetuation of the language of the predecessor Agreement which provides for 100% of premium. From all of the foregoing, the undersigned concludes that the external comparables establish a preference for the Employer offer.

We look now to the private sector practice, and we have in evidence the testimony of William Brazzoni, the owner and president of Group Health Planning, Inc., who testifies at page 87 of the transcript:

> We see the cost escalating at an alarming pace. Most corporations that we have are either having the employees chip in part of the premium or they are going to higher deductibles, or I should say a higher -- a major medical contract or a higher deductibles is what's happening.

Again, at page 92 of the transcript, Brazzoni testifes in response to the question:

Q. What in your opinion are the most effective means for a city to reduce health insurance premium costs?

A. There's two ways. Cost containment or what they call a PPO, which is referred to as a Preferred Provider Option where the employees, if they go to a doctor that's listed, get a little better benefits than if they do not go to a PPO provider.

The other area is having the people share in the cost of the premium so they're aware of the costs that are coming out. . . . my feeling is that if they're sharing in the premiums, they're aware of where these rates are going on a yearly basis. I think that they're willing to sit down with the owners of a business or even a municipality and say 'these rates are getting out of hand because we've got to pay 25 percent of it . . . .

The undersigned credits the expert testimony of witness Brazzoni and concludes therefrom that the private sector practices are tending toward premium participation on the part of employees which require dollar caps in the Collective Bargaining Agreement. Thus, the private sector comparisons support the Employer proposal for caps on health insurance premium contributions on behalf of the employees in the unit.

With respect to the practices of other municipal employers as it relates to health insurance contributions, there is in evidence Employer Exhibit No. 45 which specifies the amount of health insurance contributions that the School District of Cudahy makes on behalf of its paraprofessionals. We find from Exhibit No. 45 that the School District of Cudahy specifies a dollar amount of premium contribution equal to the full premium rates chargeable for the years 1989-90, 1990-91 and 1991-92. Thus, while employees in Cudahy School District paraprofessional unit are assured of 100% contribution during the term of the Agreement, there is, nonetheless, a dollar amount specified as the premium contribution of the Employer which more nearly matches the Employer proposal here than does the perpetuation of the language contained in the predecessor Agreement which calls for 100% of premium. Since this is a comparison of fringe benefits rather than a comparison of wages, the undersigned considers it appropriate to take into consideration the practice within the Cudahy School District. If a wage comparison were attempted, obviously it would be inappropriate and would carry no weight. Because there is weight to be attached to the comparison of the providing of fringe benefits, it follows that the practice as it relates to the paraprofessionals in the employ of Cudahy School District supports the Employer final offer here.

We turn now to a consideration of the internal comparables. We have in evidence Employer Exhibit No. 38 and Union Exhibit No. 28 which purport to show the practice as it relates to health insurance contributions for other employees of this municipal employer. The record reveals that there are six collective bargaining units with which the City of Cudahy bargains. In addition, there are a number of unrepresented employees which include the Fire Chief and his Assistant, the Police Chief, the Director of Engineering, the elected City officials and nonunion officials. The record establishes that in 1988 all six collective bargaining units, as well as the nonrepresented employees of the City had Blue Cross/Blue Shield health insurance as a carrier, and the City provided 100% paid health insurance as the Contract provision or the ordinance governing health insurance contributions on behalf of all of its employees. The record reveals that two collective bargaining units have come to terms for 1989, the DPW Water and Clerical

unit and the Technical and Health Services unit. The record further establishes that the agreement entered into between the City and the DPW and Technical units continues to provide 100% paid health insurance as a matter of contract between those two units and the Employer. The record also indicates that the parties agreed to change the name of the carrier in the Contract from Blue Cross/Blue Shield to WPS-HIP. The record further shows that at the time of hearing there was no agreement between the Employer and the Police unit, the Police Command unit, or the Library unit. The evidence also establishes that the unrepresented personnel in the employ of the Employer, who were covered by Blue Cross/Blue Shield as the health insurance carrier, and who had 100% paid health insurance in 1988, were unilaterally converted in 1989 by the Employer to the same dollar caps on insurance which the Employer now proposes here in its final offer. Additionally, the name of the carrier for unrepresented employees was changed from Blue Cross/Blue Shield to WPS-HIP in 1989. From the foregoing evidence, the Employer argues that the dollar caps on health insurance should be imposed by the Arbitrator, because the Employer has unilaterally made that change for unrepresented personnel. The Employer further argues that the DPW and Technical units settled without dollar caps, because neither one of these two units is considered to be a lead unit, the Employer further arguing that both settlements significantly limited the City's exposure by removing Blue Cross/Blue Shield from the Contract, thereby avoiding serious problems in 1990. The Employer also points to the testimony of Alderman Scott Mulqueen, who testified that he participated in negotiating the Collective Bargaining Agreements between the Employer and DPW and Technical units. The Employer argues that the two aforementioned units continue to maintain the language of the predecessor Agreement calling for full payment of health insurance premiums because they entered into three year agreements with increases of 3% and 1% each of the three years; and because they entered into two-tier wage schedules with the starting step frozen; and because there is an elimination of reference to Blue Cross/Blue Shield as the standard carrier; and because two personal days each calendar year were exchanged for three emergency days.

The undersigned has considered all of the evidence and the Employer argument with respect to the internal comparables, and concludes that the Employer's reliance on the internal comparables is misplaced. Contrary to the Employer's argument, the undersigned finds that the internal comparables support the position of the Association in this matter. The facts are that it is only the unrepresented employees of the Employer who have dollar caps placed on insurances. The DPW unit and the Technical Health Services unit entered into an agreement covering the years 1989, 1990 and 1991 perpetuating the language of the predecessor Agreement calling for full payment of health insurance premiums for active employees. The remaining three collective bargaining units had not reached an agreement with the Employer as of the date of hearing, and, consequently, there remains in place the language of their predecessor agreement calling for the Employer to make full payment of all health insurance coverage for active employees. Thus, all other units with whom the Employer bargains continue as of this date to have provisions calling for 100% payment. Arbitral authority has long held that internal consistency, particularly with respect to fringe benefits, is the paramount comparison to consider. The undersigned agrees with that arbitral authority, and finds specifically that the internal comparisons favor the adoption of the Association proposal to maintain the status quo.

The Employer has argued that based on the testimony of Alderman Mulqueen, it is their intention to negotiate the change in coverage first with the firefighters, because they are deemed to be the lead unit with whom the Employer bargains. There is testimony from Mulqueen to that effect, and the Arbitrator accepts

that testimony at face value. Mulqueen testifies at page 167 of the transcript as follows:

> . . . The fire bargaining unit is the lead unit in negotiations, so we had that to contend with also.

Q. In other words, that it would have to be a city-wide pattern of changes --

A. That's correct.

Q. -- in health insurance.

A. That's correct.

Q. And you're thinking that you're going to have to take this one step at a time, is that correct?

A. That's correct. That was our thinking during negotiations right through to the council's agreement on formal settlement.

The foregoing testimony and argument is unpersuasive to the undersigned. Even if one accepts that the fire bargaining unit is the lead unit which sets patterns in negotiations, there is no pattern set here for an arbitrator to follow. There simply is no bargaining unit which has come to the terms capping health insurance benefits in their agreement with the Employer. Furthermore, even if one were to concede that the patterns should be set in arbitration, a concession which this Arbitrator is unwilling to accept, it is not necessary for the current Agreement to include the dollar caps on health insurance as it relates to the DPW and Technical units. The record reveals that these two units have entered into a three year Collective Bargaining Agreement which carries through the year 1991. The final offers in the instant dispute deal with the years 1989 and 1990. Consequently, even if one accepts that the fire unit should be the first to bargain the changes proposed by the Employer, or have those changes imposed upon it by an arbitrator, it is unnecessary to do so in this round of bargaining, because the Employer will bargain this unit again prior to the time that either of the two aforementioned units enter into collective bargaining. Consequently, the fact that the Fire Department bargaining unit is deemed to be a lead unit by both the Employer and the Association is unpersuasive as far as the selection of a final offer in this dispute is concerned.

Mulqueen's testimony establishes reasons why the City abandoned negotiating for dollar caps with the DPW and Technical units. Among those reasons are the fact that they were able to bargain a split wage schedule which saved according to the testimony of Mulqueen $25,000 to the Employer. The testimony establishes what the undersigned considers to be a valid reason for the Agreement which the parties entered into, and undoubtedly, constitutes a good agreement for both parties in those Contracts. That, however, does not remove the fact that both units still continue to have provisions in their Collective Bargaining Agreements which provide for 100% or full payment of health insurance through the year 1991.

The Employer has cited Mukwonago Area School District (Teachers), Dec. No. 25821-A (9/12/89), wherein this Arbitrator decided the primary insurance issue in favor of the Employer, because he found that there was support among the comparables; because there was a need for change necessitated by a rising health care cost, both

in the private and public sectors; because of the private sector efforts to also control insurance costs and internal consistency among employee groups, both represented and nonrepresented. There is a significant distinction between the fact circumstances in this matter compared to the facts which existed in Mukwonago. In Mukwonago, the evidence established that the Teacher agreement was the only agreement which would survive without dollar caps in it if the Teacher's final offer had been adopted. Here, the record is abundantly clear that there is no other bargaining unit that has agreed to a dollar cap. Consequently, the conclusions and award in Mukwonago are inapposite in this matter.

The Employer argues that the Association's reliance on the status quo language of the predecessor Agreement is misplaced, because in so doing, the Association would perpetuate the reference to Blue Cross/Blue Shield in the predecessor Agreement. The record evidence establishes that Blue cross/Blue Shield refused to continue insurance coverage for employees of the Employer. However, there is a possibility that Blue Cross/Blue Shield may again become available in 1990, even though they refused to issue insurance coverage to employees of the Employer for 1989. The Employer points to the fact that the other two settled bargaining units have agreed to the deletion of reference to Blue Cross/Blue Shield in their Agreements, and that the unrepresented employees have also made that modification. At hearing, a witness for the Association testified that it was his opinion that the Association had stipulated to the deletion of Blue Cross/Blue Shield from the Collective Bargaining Agreement; however, when pressed further on cross examination, there was an admission that the stipulation was nonexistent. Consequently, the undersigned concludes that the reference to Blue Cross/Blue Shield continues to survive if the Association final offer is adopted, unless mutually deleted by the parties. The undersigned believes that it is not a fatal flaw to the Association position for several reasons. Most significant among them is that the reference to Blue Cross/Blue Shield in the predecessor Agreement relates only to how premium payment will be shared between the Employer and retired employees. The language of the predecessor Agreement is clear that the Employer has the ability to change carriers for its health insurance program so long as benefit levels are undisturbed. Thus, the only impact of the survival of Blue cross/Blue Shield in the Collective Bargaining Agreement would relate to the premium sharing aspects for retired employees. Secondly, in view of the Association testimony that it was their intention that reference to Blue Cross/Blue Shield should not survive, it is inconceivable to the undersigned that the Association would insist upon the inclusion of reference to Blue Cross/Blue Shield in the successor Agreement as it relates to premium sharing for retired employees, when the testimony at the hearing in this matter causes the undersigned to conclude that it was not the intention of the Association to do so.

The undersigned has considered all of the other statutory criteria, and comments particularly with respect to criteria dealing with the interest and welfare of the public. With respect to the interest and welfare of the public, the undersigned finds that criteria will not influence the adoption of either final offer. As the Employer argues at page 21 of its reply brief:

> . . . the City's final offer provides the fire unit with a dollar cap of $104.97 above the 1989 existing WPS-HIP family plan premium. During the duration of the 1989-90 collective bargaining agreement, it is anticipated that none of the employees will pay any out-of-pocket expenses, since the City has provided a very generous cap. (Emphasis in the original)

The undersigned is persuaded that it is unlikely that the dollar cap proposed by the Employer will be exceeded, and, consequently, it is immaterial from a cost standpoint whether there is a stated dollar cap in the Collective Bargaining Agreement for the years 1989 or 1990, or whether the Agreement merely says the Employer will continue to pay full cost of the insurance. Since there is no likely cost impact by the adoption of either party's final offer, the criteria of interest and welfare of the public, or for that matter, the cost of living criteria, fail to impact the outcome of the decision on the health insurance issue.

With respect to this issue, the undersigned has concluded that industry practice or external comparables favor the Employer offer as does private sector practice, and the practice of the School District of Cudahy. The internal comparables, however, favor the adoption of the Association proposal here. Because arbitral authority has consistently held that it is the internal comparables which are controlling where the external comparables lead in one direction and the internal comparables lead in the other; and because a continuation of the language is unlikely to financially impact the Employer during the term of this Agreement; the undersigned concludes that the Employer has failed to establish sufficient reason for the change at this time. If the Employer in its next round of bargaining is able to show that other units have voluntarily entered into agreements which cap premium costs for the Employer, the outcome undoubtedly will be reversed in the next round of bargaining. From all of the foregoing, the undersigned concludes that the final offer of the Association with respect to health insurance is preferred.

THE REMAINING ISSUES

Looking first to the wage dispute, we find very little distinction between the first year offer. The Employer offers 3% January 1 and 1% July 1. The Association proposes 4% for the entire year. Thus, no matter which party's offer is selected, the amount of increase on the wage rates is the same. It is only the amount of back pay that will differ between the two offers. Back pay generated by the Employer proposal is one-half percent less than the back pay generated by the Association proposal. The one-half percent calculated against the 1988 maximum pay rate for firefighters calculates to $150.24 per man. Union Exhibit No. 2 establishes that there are 26 bargaining unit positions. If one multiples the number of bargaining unit positions 26 times the additional back pay per man of $150.24, we find that the difference in the cost between the two final offers totals $3,906.24. In the opinion of the undersigned, the cost differential between the two offers is not so significant so as to establish a preference for one party's offer over the other as it relates to wages.

The wage dispute in 1990 involves an Employer offer of 3% on January 1 and 1% on July 1, compared to the Association proposal for a wage reopener. The cost of living increases for 1989 suggests that the 4% lift proposed by the Employer for 1990 is justified by the cost of living criteria. However, there is also evidence in the record which establishes that wage reopeners have been negotiated between these two parties in the past, and, consequently, the Arbitrator concludes that the Association should not be rejected merely because of the proposal of a reopener in the second year. Furthermore, the parties are likely to come to an agreement rather quickly over a wage increase for 1990, given the fact that the cost of living is now known for the year 1989. Consequently, the undersigned finds no preference for either party's final offer as it relates to the wage issue for 1990.

All of the foregoing is buttressed by the fact that the parties at hearing have stipulated to the fact that the insurance issue is the primary issue, and that the remaining issues pale by comparison to the primary issue.

The undersigned has also considered the subpoena pay and jury duty pay issues proposed by the Employer, and finds them to be reasonable proposals, particularly, in view of the stipulation at hearing that it is the insurance issue that should carry the primary weight in determining which party's final offer should be adopted. The record evidence satisfies the undersigned that both the internal and external comparables support the Association proposal for both issues. Union Exhibit No. 68 establishes that the internal comparisons support the jury duty pay proposal because all other employees within the City have time off with pay for jury duty, either as a matter of Contract or a matter of City policy. Union Exhibit No. 72 establishes that the Association proposed comparables among fire departments in Greenfield, West Milwaukee, Oak Creek, Greendale and South Milwaukee all have jury duty pay benefits, either as a matter of Contract or a matter of City policy.

With respect to the subpoena pay proposal, Union Exhibit No. 79 establishes that the internal comparables for all other represented employees provide for subpoena pay as a matter of Contract, and that nonrepresented employees are entitled to subpoena pay as a matter of ordinance. Union Exhibit No. 83 establishes that all of the other fire departments of the comparables espoused by the Association provide for subpoena pay, either as a matter of Contract or City policy.

It follows from all of the foregoing, that the Association proposals with respect to jury duty pay and subpoena pay are reasonable proposals.

SUMMARY AND CONCLUSIONS:

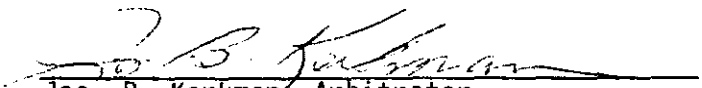
The undersigned has concluded that the Association offer is preferred with respect to continuing the status quo language of the predecessor Agreement as it relates to health insurance. Because the undersigned has concluded that either party's final offer with respect to the wage issue is acceptable; and because the evidence establishes that internal and external comparables support the Association final offer on subpoena pay and jury duty pay; and because the parties at hearing stipulate that the insurance issue is the primary issue in this dispute; it follows that the final offer of the Association is to be adopted, and it will be so ordered.

Therefore, based on the record in its entirety, after considering all of the arguments of the parties and the statutory criteria, the Arbitrator makes the following:

AWARD

The final offer of the Association, as well as any stipulations that the parties might have entered into, and those terms of the predecessor Collective Bargaining Agreement which remain unchanged throughout the course of bargaining, are to be included in the parties' written Collective Bargaining Agreement for 1989 and 1990.

Dated at Fond du Lac, Wisconsin, this 5th day of January, 1990.



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Jos. B. Kerkman, Arbitrator