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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of:

OPINION AND AWARD

TEAMSTERS LOCAL UNION NO. 695

Case 31

No. 43652 MIA-1513

Decision No. 26562-A

For Final and Binding
Arbitration Involving
Firefighting Personnel in
The Employ of

CITY OF MONONA
(FIRE DEPARTMENT)

Gil Vernon, Arbitrator

APPEARANCES:

On Behalf of the City: Jack D. Walker, Attorney - Melli, Walker,
Pease & Ruhly, S.C.

On Behalf of the Union: Marianne Goldstein Robbins, Attorney -
Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C.

I. BACKGROUND

On February 13, 1990, the Union 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 years 1990 and 1991. An informal investigation

was conducted on May 7, 1990, by a member of the Commission's staff, and the Investigator advised the Commission on July 2, 1990, that the Parties were at impasse on the existing issues.

Thereafter, the Parties were ordered by the Commission to select an Arbitrator from a list also provided by the Commission. The undersigned was so selected. A hearing was held on December 18, 1990. Post-hearing briefs were submitted, the exchange of which was completed February 19, 1991.

II. FINAL OFFERS AND ISSUES

The only unresolved issue related to the amount by which wages under the predecessor Agreement should be increased. Article 31 of the 1987-89 Contract provided for the following:

ARTICLE 31 - WAGES

31.01 Hourly wages for bargaining unit employees shall be as follows:

	<u>1/1/87</u>	<u>1/1/88</u>	<u>1/1/89</u>
Hire Rate	\$5.12	\$5.45	\$5.88
Non-Probationary Rate	\$5.63	\$5.96	\$6.39

The Employer's final offer was as follows:

"Change Article 31 - Wages, to provide for a hire rate of \$6.23 per hour January 1, 1990, and \$6.61 pr hour effective January 1, 1991. Change nonprobationary rate to provide for \$6.77 per hour effective January 1, 1990, and \$7.18 per hour effective January 1, 1991."

This represents approximately a 5.95% increase in the first year and a 6% increase in the second.

The Union's final offer was "across the board wage increases of five percent (5%) effective January 1, 1990, July 1, 1990, January 1, 1991, and July 1, 1991.

III. ARGUMENTS OF THE PARTIES (SUMMARY)

A. The Union

The Union contends that selection of their offer is necessary to bring the unit up to the lower end of the range of compensation provided to employees of other comparable fire departments. In this regard they submit that the most significant factor is comparison to other comparable fire/emergency departments. In relation to these comparables, they contend the Union's offer is more reasonable since the Monona Department is far below that of other comparable communities.

The Union also describes the duties--as they see them--of the Bargaining Unit employees. The six full-time Firefighter/EMTs work in two-person platoons on a 56-hour California schedule (24 hours on, 24 hours off for four rotations, then six days off). All Firefighter/EMTs must take the basic Firefighter course and be certified as an EMT-D. According to the City position descriptions, the responsibilities of a Firefighter/EMT are first to "respond with fire apparatus to fire or emergency scenes where threatening conditions exist to life and/or property, to provide timely and necessary

assistance to minimize loss" and, in addition, "to respond with ambulance to emergency scenes and render assistance to the sick or injured individuals."

Firefighters/EMTs are also responsible for maintenance of emergency vehicles and equipment, public education on fire and safety and inspection of buildings for fire code compliance.

The Union compares the wages of the Bargaining Unit employees to the wages to relevant classifications in the following municipalities.

<u>Municipality</u>	<u>Classification</u>
Town of Madison	Firefighter/EMT
Beaver Dam	Firefighter/EMT
Stoughton	Dumper/Driver/Custodian/ Fire Inspector
City of Madison	Firefighter/EMT
Watertown*	Firefighter/EMT
Portage*	Firefighter/EMT
Brown Deer*	Firefighter/EMT
St. Francis*	Firefighter/EMT

*Combination full-time and volunteer departments.

The Union submits an analysis of a variety of demographic statistics which they contend demonstrate the comparability of Monona to these communities.

The Union draws attention to the fact that every single comparable fire department compensates its full-time employees well above the rate paid by the City of Monona. Even under the Union's offer, Monona employees will still be behind the next lowest paid Firefighter/EMT (Portage) at \$7.96 versus \$7.76 in Monona. By contrast under the City's proposal, a Monona Firefighter/EMT

will receive only \$7.18 in 1991, 78 cents per hour below Portage. The Union puts special emphasis on the Town of Madison. The Union's proposal will bring a Firefighter/EMT in Monona up to a monthly salary of \$1,937.65 by the end of 1991. The Town of Madison will pay \$2,013 per month at the beginning of 1991 to those with three years of service, about \$85 per month more. A second increase in December 1991 will increase these employees to \$2,093.52 per month. Under the City proposal, Monona Firefighter/EMTs will lag behind the Town of Madison \$300 per month by the end of 1991. Similar disparities exist with respect to other municipalities and are detailed in their brief. For instance, even though they work eight hours less per week, Firefighters in Madison earn a monthly salary of \$2,494.27, as compared to the Union's offer which will yield in the end of 1991, \$1,937.65 per month. They also note, with respect to employees in Stoughton, that they are paid overtime for hours over 40 hours per week. The Union rejects the City's comparisons to EMTs in the communities of McFarland and Fitch/Rona. This is because the employees in neither of these communities have any firefighting responsibility.

Next, the Union acknowledges that the City seeks to distinguish Firefighter/EMTs in the Town of Madison first by noting that the Town of Madison requires an EMT-I certification. The City of Monona does not. However, it does require EMT-D certification. This is mitigated by the fact that virtually all other comparable communities do not require EMT-I

certification. In fact, Portage and Stoughton do not have any EMT certification. The City also attempts to distinguish Monona by claiming that Town of Madison employees have additional custodial responsibilities. The Union flatly challenges this as factually incorrect.

The City also questions the employees' status as Firefighters. The Union challenges this with the following arguments: (1) In the City job description, the City has designated its Fire Department employees as "Firefighters/EMT;" (2) the job description states that they fight fires; (3) all Firefighters/EMTs receive basic fire training; (4) even Pump Operators are classified by the National Fire Protection Association as Firefighters; (5) the City's own workbook says that the Pump Operator performs other firefighting duties; (6) the Firefighters/EMTs are regularly the first ones to appear at a fire scene; they take command and direct the volunteer firefighters who arrive until an officer (captain or lieutenant) arrives on the scene and takes command; (7) the City enjoys an exemption from the normal requirements under the FLSA of paying overtime after 40 hours on the basis of the employees being classified as engaged in fire-protection activities; and (8) the Union also notes that the employees are covered under the firefighter portion of Wis. Stats. 111.70.

The Union also believes their final offer is supported by other statutory criteria. In terms of internal comparables, they draw attention to the fact that the City's Police Officers earn \$583 more per month than Firefighter/EMTs.

As for the wage increases in other City units, the Union also submits that such evidence is not relevant where a case has been made that a specific group of employees are entitled to catch-up, compared to those performing similar duties in comparable communities. They argue the same with respect to the cost of living.

The Union also submits that the bargaining history for this particular dispute favors them because of concessions made on insurance.

B. The City

At the outset the City lays out the historical background of the Bargaining Unit. The salient points of this history can be summarized as follows: Prior to 1970 the City operated a purely volunteer fire and emergency services program. In 1970, the City, for the first time, hired part-time drivers to be available to drive apparatus to calls. They also cleaned the station. The only qualification was a valid driver's license. In 1980, the part-time employees were provided with uniforms for the first time, and the position began to be considered as an on-going position, as opposed to short-term employment. Between 1980 and 1984, employees began to do fire inspections, educational tours and school programs.

Sometime prior to 1984 the City offered a 25 cents per hour pay increase to its part-time drivers if the employee became certified as an EMT and

25 cents per hour increase if the employee became certified as a Firefighter I. In 1983 the City eliminated the hourly premiums and required the employees to be certified EMTs. The City states that there has never been a requirement that employees have any firefighting certification. After the employees became full time, they organized in 1986 and in the first contract (effective January 1987) emphasized gains in family health insurance and the elimination of janitorial responsibilities from the job description.

Against this background the City emphasized that employees in this unit are paid to drive the ambulance and the fire engine, to provide defibrillation and emergency medical services at the basic level, and to operate the engine's pump. They steadfastly maintain that these employees are not paid to fight fires because: (1) They are not trained to fight fires, (2) they are told to stay back from fires, (3) they are not required to have firefighting experience or certification, and (4) the purpose of the bargaining unit is to get the City's equipment to the scene of a fire quickly and to hook the hydrant to the engine and then remain with their equipment. Further, in this regard, the City argues it is the City's prerogative, not the Union's or the Arbitrator's, to determine how to use its paid employees in fire protection. The City does not choose to pay its full-time employees in the Fire Department to do more than drive and operate the ambulance and engine and to provide basic EMT services.

Moving from the history and nature of the unit to addressing the specific issue, the City raises (1) the tentative agreements of the Parties and (2) the City's ability to meet the costs of the proposals. As for the tentative agreements, they note that the Parties agreed that in exchange for a \$500 one-time payment to employees, the City would change carriers, and the City's share of any health insurance premium increase would be no more than \$10 per month. They also note that the Union tried to represent at the hearing that this was a quid pro quo for a higher wage increase. In the City's opinion, the fact that the Union attempted to make this quid pro quo agreement in the face of all other evidence to the contrary shows that the Union recognizes the unreasonableness of its proposed 21.4% increase, and the failure of its "catch-up" theory to support its proposal.

As for the City's ability to pay, they draw attention to the fact that their tax base is growing at an average of only 4.1% per year, the slowest rate of any Dane County's Fourth Class cities. The City also (1) has lost population between 1986 and 1990 where other Madison suburbs have gained, and (2) has the second highest tax rate in Dane County. The City also addresses the cost of living criteria. They argue that the City's offer of a wage increase of 12% over the two years of the contract exceeds the increase in both the wage earners and all urban consumers consumer price index, by 1.1% and .9% respectively.

The City relies on internal and external comparables. In terms of external comparables, the City relies on the nearby communities of McFarland, Fitchburg, and Verona (Fitch/Rona). They rely on these additionally because they argue that the employees in these other units have duties most similar to the Monona employees. These are two important indicia of comparability, in their view.

Regarding EMT duties, the City states in more detail that the duties of the Monona employees require them only to have the EMT basic license and an EMT-D (defibrillation) certificate. They do not, as the Union asserts, do the same things as EMT-Is in the Town of Madison or the EMT-Paramedics in the City of Madison. To do so would be illegal.

Against their detailed analysis of the duties, the City distinguishes the bargaining unit from the Union comparables on the basis that they are either (1) full-time and licensed Firefighters without EMT duties (Portage, Stoughton), (2) full-time/licensed Firefighters and Paramedics (City of Madison), or (3) full-time licensed Firefighters and EMT-I's (Town of Madison). Thus, in each instance, the different duties they perform justify the higher pay they receive.

They also question the use of other comparables, such as Beaver Dam, Brown Deer, and St. Francis, on the basis of size, proximity, and/or lack of detail as to what their duties are. Moreover, half of the Union's appropriate comparables were never raised in bargaining.

The City argues that Monona's employees are paid more when comparing their wages to the employees in the Fitch/Rona and McFarland EMS districts. These comparables are the closest in terms of level of training, responsibility, and duties to the City of Monona employees. The annual compensation in McFarland was \$18,700 and \$18,000 in Fitch/Rona in 1990. By comparison, they submit Monona's highest paid EMT will earn at least \$24,932 in 1990. They argue that the Union's offer of 21.4% would move this unit of employees far beyond the appropriate comparables. There is no justification to do so.

Last, the City addresses the internal comparables. During the period 1988-91, the other units of represented employees bargained wage increases ranging from 15.7% for the Teamster-represented dispatcher unit to 18.8% for the Teamster-represented police unit. The nonrepresented employees received increases totaling 14.25%. However, during the same period, the employees in this unit will receive under the City's wage proposal (12% over 1990-91), increases totaling 24.8%. That's 6% more than the Teamster-represented police unit. Under the Union's proposals, the total would be 32.8%, or 14% more than any other represented unit. They submit that there is no justification, historical or otherwise, for a disparity as great as the one proposed by the Union.

IV. DISCUSSION AND OPINION

This is a most difficult case in that there simply are not any truly comparable employees within a reasonable proximate geographic distance. Nobody is quite like the Firefighters/EMTs in the City of Monona. The Arbitrator views them as distinctly unique. In this regard, both Parties exaggerate certain aspects of the job, obviously to their advantage.

The employees are more than ex-college students merely driving fire trucks that the City tries to portray them as. On the other hand, they do not have the responsibility or the training that Firefighters/Paramedics do in the City of Madison or the training of Firefighters/EMT-I's in the Town of Madison. Nor do they have the same firefighting responsibilities that a single-purpose department would.

Nonetheless, the employees definitely have some firefighting responsibilities and training. It would, however, be inaccurate to call them Firefighters in the same sense as the job is constituted in most departments. They are not required to have a Firefighter license, and they don't do the same things at a fire scene as a first-line Firefighter would. Thus, while they do have some Firefighter responsibilities and training, the employees can be best described as second-line or secondary Firefighters.

As for EMT duties, the employees clearly do not have the training, duties, or licensure of an EMT-I or a Paramedic which are clearly advanced

classifications. As EMT-Ds they do have somewhat greater qualifications than an EMT-Basic.

These considerations make directly meaningful comparisons difficult to any regular fire department. It also makes comparisons difficult to the City of Madison. Even comparisons to the Employer comparables of McFarland and Fitch/Rona are difficult because they are strictly EMT units. Comparisons to McFarland and Fitch/Rona are even more difficult because they are non-unionized. In McFarland the EMTs are either volunteers or, if not, they have some managerial responsibilities. In Fitch/Rona there is a Director/EMT-I who has managerial responsibilities. There is one staff EMT who apparently has no management responsibilities. However, he or she is an EMT-I and non-unionized.

The Town of Madison is a combined department but requires greater qualifications, licensure, and responsibilities than Monona. Again, direct cookie-cutter comparisons are difficult. Stoughton requires Firefighter responsibilities similar to those in Monona--they drive, pump, and do inspections--however, they do not have EMT-Basic or EMT-D training or responsibilities.

These are just some of the difficulties presented in this case in making direct comparisons. Instead, the wages, terms and conditions of employment of

these various employers can only be used as a rough guideline of the proper wage levels of Firefighters/EMTs in Monona.

It seems to be an unreasonable expectation for the Monona Firefighter/EMT to expect to be paid at the same level as Firefighters/EMTs in the City of Madison and the Town of Madison, where the jobs require greater skill, training, and responsibility, the City more so than the Town. The hourly rate in the Town of Madison, according to City Exhibit 24, is \$8.92 per hour. The Monona employees are not entitled to that much.

On the other hand, it seems reasonable that they be paid more than employees in the Stoughton Fire Department which, while having similar firefighting responsibilities, have no EMT training or responsibilities. Stoughton employees do perform custodial duties. However, this would militate toward a lower rate than higher rate because it is unskilled work. The maximum hourly rate for the "Pumper/Driver/Custodian/Fire Inspector" classification in Stoughton effective January 1, 1990, will be \$7.35 and effective January 1, 1991, will be \$7.71.

The maximum rates under the Parties' proposals are as follows:

	<u>January 1, 1990</u>	<u>End of 1991</u>
Union	\$6.71	\$7.76
City	\$6.77	\$7.18

The limits created by the Town of Madison and Stoughton suggest that the Union's proposal is justified. Even when looking at the EMT-I in Fitch/Rona, the Employer seems to be far out of step. The hourly rate there is \$9 per hour.¹ While it is a higher EMT classification, a \$1.82 per hour disparity is beyond the limits of any reasonable distinction.

The City did rely on the rate of wage increases in the internal comparables. There is no doubt that their offer is closer to the varying amounts received in collective bargaining by other City units. However, internal comparables deserve the most weight when there is a consistent pattern among the internal settlements, which is historically based. In this case there is no definite pattern; there is variance among the settlements. Moreover, there is no history that these units have always settled for the same amounts. Even though the internal settlement pattern isn't particularly relevant, the wage level of the Police at almost \$7,000 per year or \$583 per month more than Firefighter/EMT weighs in favor of the Union. While there is no parity history here, such a large disparity is difficult to justify.

¹In this regard the Arbitrator rejects as invalid the Employer's attempt to compare wages on an annual basis including overtime. A straight hourly to hourly comparison is more reliable and meaningful and the commonly accepted method of comparison.

More importantly, the internal pattern cannot control when adherence to that pattern would cause too much external market disparity. In this case, the general guidance gained from looking at other municipalities strongly suggests that the Employer's offer would perpetuate a great wage disparity. In fact, relative to external comparables, there is absolutely no support for the wage levels that would result from the Employer's offer. As noted, even the hourly rate for the EMT-I in Fitch/Rona--a comparable relied on by the Employer--is \$9 per hour, which is \$1.24 greater than the Union's offer. With regard to the cost of living, it too must take a back seat--just as the internal comparables--in a catch-up situation.

The Employer also raised a question with respect to its ability to pay. However, there is no strict or meaningful inability to pay for the Union's offer demonstrated in this record. The City's need to maintain the tax levy must be balanced against the employees' need for fair compensation. The employees have demonstrated a need for catch-up and have addressed it reasonably. They now exceed the rate in Stoughton for less skill work, and their offer does not advance them to the level of the Town of Madison. Their offer also has the advantage of providing for split increases which phase in the cost of catch-up to the Employer. For example, the cost to the Employer will not be 10% the first year. The split increase will lower the cost to 7.65%.

AWARD

The final offer of the Union is selected.



Gil Vernon, Arbitrator

Dated this 8th day of April 1991.