STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of

CITY OF RACINE

for Final and Binding Arbitration
Between Said Petitioner and

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 321, AFL-CIO

Case 386
No. 46931 MIA -1696
Decision No. 27448-A

I. APPEARANCES

On Behalf of the City: William R. Halsey, Attorney at Law
Long & Halsey Associates, Inc.

On Behalf of the Association: Robert K. Weber, Attorney at Law
Hanson, Gasiorkiewicz & Weber, S.C.

II. BACKGROUND

On January 30, 1992, the Employer filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to initiate final and binding arbitration pursuant to Section 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 fire fighting personnel for the years 1992 and 1993. An investigation was conducted on April 6, 1992, by Marshall L. Gratz, a member of the staff of the Wisconsin Employment Relations Commission. The investigator advised the Commission on October 20, 1992, that the parties were at impasse on the existing issues as outlined in their final

offers, transmitted along with said advice, and that he has closed the investigation on that basis. On October 29, 1992, the Commission ordered the parties to select an arbitrator. The undersigned was selected from a list provided by the Commission. On December 2, 1992, the Commission issued its order appointing the undersigned as the Arbitrator.

A hearing was scheduled in the matter for February 17, 1993. The proceedings were not transcribed. The parties reserved the right to submit post-hearing briefs, which were due on or before May 30, 1993. The Employer brief was received on May 13, 1993. The Union brief was received on April 30, 1993.

Based on the review of the evidence, the arguments and the criteria set forth in the relevant statute, the arbitrator renders the following award.

III. FINAL OFFERS AND ISSUES

The Employer's offer is attached as Appendix A and the Association's final offer is attached as Appendix B. It is noted that several proposals in the final offers were resolved by the time of the arbitration hearing. They include the following:

1. Duration - Article I:

2. Article XXIII - Clothing Allowance. Both parties agreed that $450.00 shall be allowed for 1993. The Union wants an additional $150.00 for new employees during the first six months of their employment.

3. Wages and COLA adjustments have been agreed to.

4. Residency requirements have been agreed to.

5. Additional tentative agreements include:

   a) Recall procedure - Article XXVII.

b) Out of grade opportunities.
c) Vacation procedures.

These items above are reflected in the Employer's FINAL OFFERS AND ISSUES and are reiterated by the Union in the same type of document, but the Union also indicates the following:

> 6. "The parties have jointly agreed that all provisions from the predecessor agreement not cited above, shall continue throughout the terms of this agreement."
>
> 7. "... The only provisions in dispute ... are (set forth below)."

There are only four (4) issues remaining to be addressed here. They are: (summary as follows:)

> "A. Article XIV - Insurance
> B. Article XV - Pension
> C. Article XXVII - Section 7, - Work Period
> D. Article XXIII - Clothing Allowance."

The respective positions and proposals are set forth more completely as follows:

1. A - Insurance.

The parties mutually agreed to increase the prior deductibles of $75.00 for individuals and $225.00 for the family, increasing those to $100.00 for each individual and $300.00 for the family. The remaining issue is whether or not to apply the Employer's demand of the "Coordinated Care Provisions" described in the health care manuals. The Association opposes such application.

2. B - Pensions.

The existing contract language states as follows:

"Article XV - Pension

1. Chapter 41 Pension: The City shall pay an

amount equal to eight percent (8%) of the salary of each employee participating in the Wisconsin Retirement Fund prescribed by Chapter 41, Wisconsin Statutes, as and for employee contributions as established by Statutes."

The Employer demands a "clarification" of the existing language - adding the following:

"...As required by state mandate for each eligible employee..."

And also requires that the reference be included as follows:

"The City shall pay an amount (up) to eight percent (8%) of the salary of each employee... (As required by state mandate for each eligible employee)..."

Therefore, the proposed new version of the language of Article XV -Pension: will read as follows:

"The City shall pay an amount ~~equal~~ up to eight percent (8%) of the salary of each employee as required by state mandate for each eligible employee participating in the Wisconsin Retirement Fund prescribed by Chapter 41, Wisconsin Statutes, as and for Employee contributions as established by Statutes."

The Employer unilaterally reduced the amount of contributions for each employee on or about January 1, 1991, following a legislative revision of the minimum amount of eight percent (8%) - to seven and one-half percent (7½%) effective on that date. The Employer wants the new figure (7½%) validated by the "clarification" language it has proposed. The Association refers to and relies upon a 1993 grievance arbitration decision (July 2, 1993) which maintains the eight percent (8%) amount (paid by the employer) as required by the existing, prior language of the (1991 - 1992) contract - "Article XV - Pensions": as stated above; and argues further support sustaining the eight percent (8%)

amount referring to an "interest" arbitration decision involving the Fire Fighters Local at West Allis, Wisconsin, dated January 28, 1992, which decision also supported a continuing eight percent (8%) amount of employee contribution pursuant to the language of the prior West Allis contract.

The Employer demands validity of its reduction of the payment of eight percent (8%) to seven and one-half percent (7½%), pursuant to the legislative action of January 1, 1991, and also demands that its "clarification" phrase should be added to the existing pension language for this contract - 1992-1993.

Both parties argue that their respective positions on the pension dispute are more reasonable than the other's according to the statutory criteria for "interest" arbitration.

The above two (2) ISSUES were primarily proposed by the employer and constitute its final offer position. The following two (2) ISSUES: Work Period and Clothing Allowances - were primarily proposed by the Union and constitute its final offer.

3. C - Work Periods - Article XXVII
Section 7 - (p. 33 - Contract)

The Union argues for an adjustment of the Fair Labor Standards Act application for more equitable overtime distribution by adopting new language pertinent to the 1985 amendments. The Union cites several grievance arbitration decisions for support of its approach to this matter.

The existing language states as follows:

ARTICLE XXVII
Overtime Pay (p. 31)

(Section) 7. Work Period: (p. 33)

"For purposes of determining overtime payments under the Fair Labor Standards Act of 1974 Amendments affecting Fire Fighters, the work period is defined as twenty-seven (27) consecutive twenty-four (24) hour periods commencing on January 1, 1976."

The proposed new language states:

(Section) 7. Work Period: (p. 33)

"For purposes of determining overtime payments under the Fair Labor Standards Act amendments of 1985, affecting Fire Fighters, the work period is defined as twenty-seven (27) consecutive twenty-four (24) hour periods. The starting dates for the work periods of the respective shifts shall commence as of the time each shift finishes the twenty-seven (27) work day period it was working at the time the agreement was ratified or an interest arbitration award is issued."

The City prefers the existing language, but acknowledges that the Union's demand is not unreasonable.

4. Article XXIII - Clothing Allowance (p. 29 - Contract)

The Union suggests adding the following clause:

"The City shall pay the cost of repairing or replacing uniforms and equipment damaged in the line of duty."

The language of the existing contract states as follows:

Article XXIII
Clothing Allowance

"Each member of the unit shall be paid a clothing allowance of Four Hundred Dollars ($400.00) during 1990 and 1991. Each new employee shall be paid an additional allowance of One Hundred Fifty Dollars ($150.00) upon completion of his/her first six (6) months of employment. The purpose of this clothing allowance shall be purchase and maintenance of all uniforms and protective clothing and equipment which bargaining unit employees ar required to possess as a condition of their employment, It is agreed that if, in the future, any stat or federal law or

regulation is adopted which requires the City pay for new protective clothing and equipment, the above enumerated clothing allowance shall be deducted from the City's cost for purchase of said clothing or equipment."

The Union proposes that the following language be added:

"The City shall pay the cost of repairing or replacing uniforms and equipment damaged in the line of duty."

Both parties agree that the Four Hundred and Fifty ($450.00) (new) amount for clothing allowance shall be paid for 1993, but not for 1992. The City has similar language as a policy matter and argues that the policy approach is sufficient and appropriate, but the Union wants contract language for that purpose. The City argues that its policy will replace and repair where it is necessary - apparently according to the City's judgment on the matter. The City also argues that its policy is superior to comparable comparisons on this matter.

IV. ARGUMENTS OF THE PARTIES

A. The Employer.

1. Clothing Allowance

The City Exhibits (numbers seven and eight) are pertinent in this matter of clothing allowance. City Exhibit number 7 is an inter-office communication from Chief Chiapete to all members. It is dated May 4, 1994 and is referred to as General Order G-14. The subject is "Reimbursement for lost or damaged property".

I. PURPOSE

"To establish a uniform method in which property

will be repaired, replaced or reimbursed if lost or damaged while engaged in authorized fire department activities."

II. METHOD

"The Administrative Lieutenant has the responsibility and authority to administer this policy in accordance with the following guidelines."

III. GENERAL REQUIREMENTS

There are separate sentences under the heading of "General Requirements", A through H, which elaborate the conditions.

Also on the second page are two additional headings, shown as IV, WHILE ON DUTY and V, WHILE OFF DUTY. There are two sentences, A and B, WHILE ON DUTY; and three sentences, A, B and C with respect to WHILE OFF DUTY. Item B details the, "probable life from purchase of clothing and equipment is as follows:" and then lists each piece of equipment that fire fighters will need, and indicates the number of years or months that the particular item will last. C indicates that; "Any claim submitted must indicate the original purchase price and the age of the item." The order is signed by Ronald W. Chiapete, Chief. All of the above recitation of this clothing matter is on City Exhibit 7.

City Exhibit 8 is titled; A. Standard Operating Procedure, and refers to a GOAL:

"To establish a uniform method in which property will be repaired, replaced or reimbursed if lost or damaged while engaged in authorized fire department

activities."

All of the General Requirements referred to in City Exhibit 7 are stated verbatim again in City Exhibit 8 under the heading titled, "GUIDELINE". The language following states;

> "The Administrative Lieutenant has the responsibility and authority to administer this policy in accordance with the following guidelines."

All of the A through H items are reiterated there as Guidelines which originated in City Exhibit 7 as indicated previously. The additional sentences under, WHILE ON DUTY and, WHILE OFF DUTY on City Exhibit 7 are reiterated on the second page of City Exhibit 8 listing the same and labeling them, I,J,K,L and M.

In general, the City shall reimburse the actual purchase cost, off-setting depreciation and pro-rating the item according to age and condition. The longevity list is referred to and will be applied. Item E of the Guideline says "Property lost or damaged as a result of negligence will not be covered." I presume that the negligence could obviously be contested. Apparently the Administrative Lieutenant will be the authority in determining the original value and the replacement value, or repairing the item. The sentence F refers to gross negligence damage. The sentence G refers to fraudulent claims, and the sentence H describes a monthly inspection and a record made of the actual condition, which are

noted on the monthly station report.

2. Work Period. (Section 7 - Article XXVII, p. 33)

The parties presented a stipulation of facts on this matter of Work Periods, a copy of which is attached. The gist of it indicates that a C shift employee who takes a week off toward the end of a twenty-seven (27) day work cycle may lose one FLSA period amounting to an average amount of $81.00. The inequity also affects A or B shift employees who wish to take a similar week off at the end of the cycle. They will lose two FLSA periods for a total of about $162.00. The above circumstance is legal under the FLSA law but it obviously creates the described inequity. The Union proposes to move the end of the A and B shift cycles forward to the end of their twenty-seven (27) day work cycle. An example is submitted on page two of a Supplementary Exhibit 1, Section B. The parties also submitted a Supplementary Exhibit 2 which is a calendar of shifts in November. The language from the Wauwatosa contract was also submitted as Supplementary Exhibit 3 and is offered as a way of minimizing this inequity. Apparently, both parties are willing to apply this remedy.

3. Insurance. (Article XIV - Insurance p. 15)

The dispute here is very significant. It affects the health care provisions provided the parties, and is referred to as the "Coordinated Care Provision". The

contract language is Article XIV Insurance, on page (15) fifteen of the contract. The first section is 1. Medical and Hospitalization: It states as follows:

"On the first day of the month following employment every member of the unit shall be provided during the life of this contract with medical and hospitalization insurance coverage equal to the Blue Cross- Blue Shield Series 2000 Plan. The City shall pay the full family and individual premiums. The City may from time to time change the insurance carrier and/or self-fund its health care program if it elects to do so, if such change provides equivalent coverage.

Effective January 1, 1991, all eligible members of the bargaining unit shall be required to satisfy an annual, up-front health insurance deductible of $75.00 per individual (now $100.00 per individual), $225.00 aggregate (now $300.00 aggregate). This deductible provision shall also apply to sections 3 and 4 below for those employees active on January 1, 1991, and are subsequently covered under subsections 3 and 4." (underlining added and agreed, mutually.)

The Employer's proposal will add a sentence to the above which will state as follows: "Employees shall participate in the Coordinated Care Provisions of the coverage."

The parties have agreed on the deductible figures. The arguments by the Employer in favor of the "Coordinated Care Provisions" emphasizes a number of items which should be persuasive: (as follows)

1) The City pays one hundred percent (100%) of the premium for all health insurance plans available to members of the bargaining unit, and will continue to pay one hundred percent (100%) of the premium costs of the health program.

2) The Coordinated Health Care Provisions are explained in City Exhibit 3, which is a booklet of approximately 50 pages. The description of the requirements of the Coordinated Care Program are found on pages 17, 18, and 19 of City Exhibit 3, all of which are attached as Appendix C here.

3) The Employer's brief indicates that the escalation of health insurance premium costs has increased approximately 79% from 1987 through 1992.

4) The City now pays about $475.00 per month for health insurance coverage for family members in this bargaining unit. The employees pay no portion of that health care cost.

5) The Employer Brief argues that there is no dispute that the City of Racine provides the most lucrative health care package for any of the employee groups as mentioned by the Union as comparables.

6) The City was attempting to examine its health care costs and engaged outside consultants for suggestions. The Coordinated Health Care Provisions emerged from those discussions with the outside consultants and was proposed by them in an attempt to slow such escalating costs.

7) City Exhibit 4 indicated that approximately 255 employees have been enrolled in the Coordinated Care Provisions, and about 525 other employees have not been

enrolled, which does not include the fire fighters here. The Brief of the Association will argue the problem of not wanting to belong to this system and explain its reasons for that conclusion.

4. Pension. (Article XV - p. 16)

The parties submitted a stipulation of certain facts to the undersigned with respect to the pension circumstances. A copy of the stipulation is attached and is referred to as Appendix D.

1) The last sentence of the stipulation states as follows:

"...The parties agree that if the City contributes eight percent (8%) it will be the only City employee group where the City contributes more than the statutory required amount." Historically, many municipalities have agreed to pay the employee contribution on behalf of the employees due to the course of collective bargaining. The two parties here have had such an agreement for over twenty (20) years - Article XV of the labor agreement.

2) The apparent initiation of this Pension statute occurred in approximately 1973 when the contribution rate for employees was 6½%. That amount increased in 1974 to 7% and again in 1975 to 8%. That level of 8% continued until January 1, 1991 when the Wisconsin legislature reduced the contribution rate for employees to 7½%. At the same time, the City of Racine reduced its employee contribution from the 8% figure to the 7½% figure to correspond with the mandates of the Wisconsin Statutes,

Section 40.05. The Union filed a grievance in April, 1992 claiming that the city must contribute 8% under the contract language, and that the contract language is clear and unambiguous. The arbitrator of that grievance agreed.

The last sentence on the first page (stipulation) states: "The parties agree that the City has never contributed more than the amount dictated by statute." The City of Racine has argued that the new language, which it proposed after the grievance was filed, was and is necessary to clarify the existing language, and to appropriately reflect the actual intent of both parties. The Union disagrees and rejected the proposal of that new language, and argues that it is not necessary; that the existing language is clear and unambiguous and the decision by the arbitrator of the grievance on this matter simply supports the Union view.

3) The total Employer pension contribution on behalf of its fire fighter employees is almost 27% of the fire fighter payroll. The actual employer contribution required by the statute is 18.9 %. The additional 8% (or 7½%) for the employee contribution would amount to 26.9% (or 26.4%). In either case the employees pay nothing to the W.R.F.

4) If Racine City were required to pay the 8% amount, it would be the only city in Wisconsin paying

more for the employee contribution, per se, than the statutory amount of 7½%. That fact applies not only to firemen, but probably to all other employees also, due to the existing relationships.

5) The Union here has never before requested (nor demanded) that the employer pay more than 100% of the statutory (WRS) employee contribution to the pension fund, neither during this present collective bargaining discussion, nor any other, prior collective bargaining situation. In fact, the initiation of the pension statute occurred in the early 70's starting at 6½%, moving then to 7%, and again later to 8% in 1975, where it stayed until the reduction of January 1, 1991 to 7½%. The matter of the reduction from 8% to 7½% came alive in the nature of a grievance in April 1992, more than a year after the commencement of the reduced payments. The matter was then alive in this current bargaining circumstance. In the course of those prior escalations from 6½% to 7% and from 7% to 8%, the Union always requested that the Employer pay the higher, escalated rate. The City agreed to do that for each of the two times of increase according to the testimony of Mr. Kozina.

6) The general apparent intent of both parties from 1973 to 1991 (actually to 1992 - April - grievance) was that the Union wanted the City to pay the required

statutory contribution for it's employees and the City agreed to do so. The (7½% - Jan 1, 1991)payment by the City for the then existing statutory amount is apparently what both parties contemplated by virtue of their past practices since the early 70's.

B. Arguments of the Association (Union).

"The final offer of the Union is the most reasonable in as much as the changes it proposes are modest and equitable and are in line with external comparables, whereas the changes proposed by the City are drastic and unsupported by pertinent comparables or other criteria."

"The City's proposals...(would also)...break the long-standing parity with the police department on pensions and insurance."

1. Clothing Allowance.

(a) The Union reiterated its proposed language as follows: "The City shall pay the cost of repairing or replacing uniforms and equipment damaged in the line of duty." (b) As comparables, the Union cites the police department of the City of Racine and also the language in the contracts of the cities of Waukesha, Madison and Wauwatosa. (c) The Association's Brief then reiterated the language of City Exhibits 7 and 8 (which have been set forth previously in the Employer's argument on this subject). The criticisms of these policy languages by the Union generally attack the conditional limits for reimbursement, replacement or repairing damaged equipment. The Union also particularly objects to the fact that this is simply a policy matter. Their view is

that it ought to be in the contract with the language they have proposed.

The Union illustrates an apparent refusal of the Employer to replace a damaged uniform which occurred on a training run rather than a real fire run. The Union claims that there is no justification for distinguishing between the two. These matters which are "policy" are subject to change at any time. Contract language will continue throughout the period of time. The Union recites a current rule (Brief p. 14) as follows:

> "Moreover, even the current rule is subject to change at any time. Pursuant to Article VI, Sec. B., '...The rules of the Racine Fire Department are within the sole authority of the City of Racine and that it may establish, modify, or repeal rules without negotiations of any type.'"

Article VI Management Rights (pp. 7 and 8 - Contract)

> "The City possesses the sole right to operate the Racine Fire Department and all management rights reposed in it, but such rights must be exercised consistently with the other provisions of this Agreement and the past practices within the Racine Fire Department unless the past practices are modified with this Agreement, or by the City under rights conferred upon it by this Agreement, or the work rules of the Racine Fire Department. These rights, which are normally exercised by the Chief of the Racine Fire Department, include, but are not limited to, the following:"
>
> "A...
> B. The Union acknowledges that the establishment and modification of the rules of the Racine Fire Department are within the sole authority of the City of Racine and that it may establish, modify, or repeal rules without negotiations of any type. New rules or changes in rules shall be posted in each Fire Station five (5) calendar days prior to their effective date unless an emergency requires more rapid implementation of the rule. The City agrees that all the rules will be reasonable with the reasonableness subject to the Grievance

Procedure starting at the second step."

"C", "D", "E", "F",... (p. 8 - Contract)

"The City reserves the total discretion with respect to functions and/or missions of the Department, including the budget, organization and technology or performing that function or mission except as may be modified by state law. The Union agrees that it will not attempt to abridge these management rights and the City agrees that these rights shall not be exercised to undermine this Agreement or the existent past practices in the Department unless said practices have been modified in accordance with this article. These rights shall be exercised in a reasonable manner, consistent with the traditional manner in which they have been exercised prior to the execution of this Agreement. The exercise of these rights shall be subject to the grievance procedure." (underlining added).

The writer here has recited the above parts of the Management Rights Clause of the Agreement, Article VI on pages 7 and 8 of the contract, since the Management Rights Clauses are very significant, applying to most disputes between the Union and the Employer.

2. Work Period (Article XXVII-overtime pay (beginning p. p. 31-contract))

I am first setting forth now the headings of Article XXVII. They are as follows: 1) Definition: 2) Definition of On-Call Shift: 3) Minimum Hours, A. Extended Work Day: 4) Scuba Diving Pay: 5) Fire Alarm Dispatcher: 6) Court Time: 7) Work Period:

The special part of the exiting Contract - Section 7. Work Period (p. 33) States as follows:

"For purposes of determining overtime payments under the Fair Labor Standards Act of 1974 Amendments affecting Fire Fighters, the work period is defined as twenty-seven (27) consecutive twenty-four (24) hour periods commencing on January 1, 1976."

There are two additional sections titled, 8) Reopener; and 9) Recall Procedure. They are both on page 33, but number 9) overlaps to the top of page 34 of the contract.

The Union Brief discusses this problem at the bottom of page 9 of the Brief and continues to the bottom of page 14 of the Brief. There is also a stipulated set of facts between the parties, which is attached. The problem here involves the application of the Fair Labor Standards Act which requires a specific number of days in a working cycle in order to qualify for overtime payment. Generally, all round-the-clock operations such as fire fighting, where employees must be on duty; those operations require at least three shifts of employees, and sometimes four (4) shifts or squads. That is true no matter what kind of operation it might be. According to the present work schedules, the fire fighters of the City of Racine have an A shift, a B shift, and a C shift. According to the Racine Fire Fighters scheduling, the A shift is subject to a loss of approximately $162.00 at the end of a twenty-seven (27) day work cycle because of the loss of overtime benefits. The B shift may also be subject to a loss of such benefits, but the C shift, however, is subject only to a loss of $81.00, given transfers into the next shift rotation. The Union Brief on page 10 argues that:

"moving the end of the A and B shift cycles forward to the actual end of their twenty-seven (27) day work

cycles would make all three shifts equally available for overtime benefits under the Fair Labor Standards Act."

Apparently, that simple change would even out the overtime possibilities of all three shifts and that would nullify the losses of overtime possibilities for the A and B shifts, at least substantially so.

The Union also argues a quid-pro-quo: a modification of scheduling the Fire Fighters' shifts (A, B and C) as herein described, vs. the Union's acquiescence in agreeing to more expensive health insurance deductibles; $75.00 to $100.00 individual, and $225.00 to $300.00, family coverage.

The Union acknowledges that the negotiation of the first original contract between the parties caught the Union agreeing to a single work cycle for all shifts rather than an equivalent work cycle for each shift. The Union acknowledges that that agreement caused this present problem, but, nevertheless, now is the time for this equivalency to be enacted.

Article XXVII - Sec. 7 - Work Period

The Union proposal of the following language is:

"For purposes of determining overtime payments under the Fair Labor Standards Act amendments of 1985 affecting Fire Fighters, the work period is defined as twenty-seven (27) consecutive twenty-four (24) hour periods. The starting dates for the work periods of the respective shifts shall commence as of the time each shift finishes the twenty-seven (27) work day period it was working at the time the agreement was ratified or an interest arbitration award is issued." (underlining added - new language)

The original language refers to the 1974 amendments and this language refers to the 1985 amendments. The work period definition of twenty-seven (27) consecutive days and twenty-four (24) hour periods on duty is not disturbed. The particular change is that new language, which the Union proposed. Each of the shifts will commence their new shifts after finishing the twenty-seven (27) consecutive twenty-four (24) hour work periods at the time the new agreement is ratified or at the time an interest arbitration award is issued, which would adjust to the Union's position in this matter. The Union Brief also emphasizes that even though there are certain disparities, the Federal law on the subject was obviously intended to apply equally to all members of any particular work force. Wauwatosa is regarded by the Union as the only appropriate comparable; in fact, the Union's new proposal applies the Wauwatosa language. On page 12 of the Union's Brief are citations of several arbitration decisions favoring equal treatment of all employees, correcting the disparate or discriminatory treatment. The Union urges that the new agreement should contain its proposed language.

3. Insurance Dispute. (Article XIV, Section 1. (p. 15))

City Exhibit 3 is a manual describing Group Health Benefits for employees of the City of Racine administered

by Wausau Insurance Companies. The Coordinated Care Program requirements are set forth in that manual on pages 17, 18, and 19, copies of which are attached. The Union Brief argued those Coordinated Care Program requirements from City Exhibit 3, verbatim from the bottom of page 15 to the top of page 19 of its Brief. The entire discussion of this insurance matter covers pages 14 to 23 of the Union's Brief, a total of 9 pages of what is essentially a 22 page Brief, ignoring page 24 which is a signature page only, and the unnumbered title page plus the first three pages which are a recitation of the statement of the issues. Therefore, there are approximately 19 pages of arguments in the Brief. The first several pages reiterate the positions of the parties and the language therein, and also the criteria which the arbitrator must consider in analyzing these matters in reaching an award. The Union Brief set forth the pertinent criteria from the Wisconsin Statutes, Section 111.77(6). Therefore, the analysis and the argument of the Union Brief occurs from pages 4 through 23. Ten of those pages are used for arguing the other three of the four problems that are in dispute. Nine pages are left for the Union Brief to discuss the insurance problem alone which includes 3¼ pages (17 through 19) describing the Complete Coordinated Care Program requirements. A copy of those pages from exhibit

3 are attached.

City Exhibit 4 contains a list of employee units of the City of Racine which have agreed to permit the Coordinated Care Program requirements, and also states a list of those units of City employees who are not subject to those requirements. The Union argument refers to those conditions and comments as follows on page 15 of its Brief:

"The coordinated care program, however, presents radical changes in the current insurance coverage, and the employee units cited in City Exhibit 4 simply demonstrate the fact that non-represented employees, units with too few employees to finance a final offer contest (e.g., Local 1199), and units without any collective bargaining rights (e.g., Staff Officer's Associations) have been forced to swallow the coordinated care program. Represented units with collective bargaining rights (e.g., AFSCME, DPW, Local 67 and the Racine Police Association) have all refused the program proposed by the City."

The next paragraph has three lines, it states:

"The coordinated care program has been analyzed and rejected because of several onerous conditions precedent to the receipt of benefits. The plan is set out at pp. 17-19 of City Exhibit 3 and reads, in its entirety, as follows:"

(The bottom of page 15 including 16, 17, 18 and the top of 19 consists of the verbatim language of the program.)

The criticisms of the "plan" by the Union Brief state as follows: (paraphrased by undersigned)

1) The program restricts medical services rather than approving such needs.

2) The "program" invites endless litigation and

virtually assures a radical increase in unpaid claims, and fears tardy reimbursement.

3) City Exhibit 3 is a 51 page booklet covering the Group Health Plan of Benefits. The General Provisions of what appear to be the contract in this City Exhibit 3, occur on pages 13 and 14. Under the title heading Predetermination on page 14 of City Exhibit 3 is this language:

> "A request for an advance determination as to whether a treatment, service or supply is a covered service may be submitted in writing to Wausau Insurance Companies. If medical review is necessary such review shall be performed by our designated Medical Management Consultant(s) (MEI, Inc.)." (p. 14 - City Exhibit 3)

4) I refer now to page 17 of City Exhibit 3 which is the start of the Coordinated Care Program Requirements. I am referring to the three (3) preamble paragraphs at the top of page 17 which use about half of that page. The Union Brief argues that there is a substantial conflict in the sense that the employees' preferred doctor, the treating physician, is subjected to being second guessed by the so-called "Health Care Coordinators"; licensed Registered Nurses and physician consultants who are available to help you and your physician plan your medical care. (The proceeding sentence is almost verbatim from the second sentence in the first paragraph and is followed by the third sentence in that paragraph which states:)

> "The final choice on your medical care is always determined by you and your physician."

and the fourth sentence states:

"However, your participation is (sic in) this program is required for you to receive full level of benefits available through this medical plan."

I might as well include the first sentence of that preamble which states as follows:

"The Group Health Plan for employees of the City of Racine includes a Coordinated Care Program which has been designed to promote access to efficient and high quality care."

The second sentence reads as follows:

"Specially trained Health Care Coordinators, who are all licensed Registered Nurses, and physicians consultants are available to help you and your physician plan your medical care."

The two sentences stated above are verbatim.

I am going to include here the second paragraph and the third paragraph of the preamble at the top of page 17. The first part of this Coordinated Care Program Requirements section. The second paragraph states:

"The program reviews and authorizes in-patient hospital care, if medically necessary or recommends a more appropriate alternative of medical care. The Program also reviews the necessity of other selected medical services and provides Individual Case Management services for complicated or long term health problems."

The third paragraph gets into the requirements and it states as follows:

"As part of this program, you are required to notify MEI of the following:

(A) All hospital admissions at least four business days in advance (within seventy-two (72) hours for emergencies; as soon as possible if admitted for delivery);

(B) All skilled nursing facility admissions, home health and hospice services;

(C) All surgeries, both in-patient and out-patient;

(D) Due date for delivery."

All of what I have set forth above is the total preamble language at the top of page 17 of City Exhibit 3.

The bottom half of page 17 running onto the top half of page 18 contains a list of eleven (11) separate requirements under the heading, Notification Procedure. Under that heading the (first) paragraph refers to the phone call numbers and recites the office hours. After that is this statement: "When you call, you will be asked for the following information:" There are eight items separately at the bottom of page 17 and three more items at the top of page 18. They include various identification matters in several respects, and your Reason for Admission, and the Physician's name and phone number and the name of the Hospital (if applicable). At the top of page 18, and after those numbers 9, 10 and 11 at the very top, is another 2½ line paragraph which states as follows:

"More specific information about notification procedure is outlined below. Failure to follow notification procedures for hospital admissions, surgeries, home health, hospice or skilled nursing facility services may result in a $200.00 penalty per occurrence."

Following the above quote about the $200.00 penalty are several more paragraphs (A) through (E) titled (A)

Pre-admission Notification of all Hospital Admissions, (B) Pre-admission Notification of all Skilled Nursing Facility Admissions, Home Health Care and Hospice Service, (C) Pre-surgery Review, (D) Due Date for Delivery, (E) Individual Case Management.

Following the explanation of "E" there is a lead in phrase at the bottom of page 18 which states, "MEI's health care coordinators will assist you by:" and then at the top of page 19 there are 5 separate possibilities which apparently are the assisting procedures.

"(1) working with the attending physician to assess your condition and medical needs;'
(2) Contact consultants when further evaluation is necessary;
(3) Monitor your progress;
(4) Act as an information resource for patient and family on alternatives to care such as home care or skilled nursing facility care;
(5) Act as patient advocate with providers."

The last paragraph on page 19 of the Union Brief describes the potential $200.00 penalty as having; "no justification". The reference is to a heart attack patient being hospitalized on an emergency basis who fails personally, (to notify) since the hospital will obviously make its contact with the employee's insurance provider at the time of admission. Therefore, MEI will be notified of the medical condition within several (3) days. Who knows what the condition might be. Perhaps the patient might still be in intensive care, and the relatives totally unaware of the new requirements, or

they are too distressed to comply.

At the top of page 20, the Union objects to several other presumed conditions as follows:

> A patient-employee facing transplant surgery is under enough pressure without having to worry about whether MEI will approve the surgery, requiring him/her to get a second opinion from an MEI-approved physician, or second guessing the employee's physician's decision on how long the employee's hospital stay should be.

6) The added contract language proposed by the Employer here with respect to this Coordinated Care Plan states as follows: "Employees shall participate in the Coordinated Care Provisions of the coverage." (Then the contract paragraph that the language would include is the increase in deductibles to $100.00 and $300.00 as described previously.) The Union position is that only the new deductible figures are appropriate for approval; nothing else. The Employer wants the simple sentence proposed for this Coordinated Care Plan to extend the existing language of Article XIV Insurance, 1. Medical and Hospitalization, paragraph 2 (p. 15 Contract)

7) Most of page 20 of the Union's Brief succinctly describes its argument with regard to its fear of the Coordinated Care Program being a device to simply and arbitrarily actually take away benefits which have been obtainable in the past. The language in the Union's Brief emphasizes that fear. That language is as follows:

"Under any of the foregoing scenarios, the result of a

dispute..not between the employee and MEI, but even between the employee's physician and MEI's 'physician advisors'.. will be non-payment or partial payment for a service that is currently being paid in full! Such disputes, at every stage (pre-admission, hospitalization and follow-up care), will, (not might) occur. These provisions are not imagined loss of benefits -- they are inevitable ones. To say that other employers have such benefit restrictions in place is not a sufficient answer in view of Mr. Kozina's admission at the hearing that each of the other employers cited in the City's Exhibit have totally different benefit plans than the City of Racine. The arbitrator is thus being asked to compare only one aspect of those plans, without even knowing what the plans are or what additional benefits those other employee units are receiving. The comparison the arbitrator is being asked to make is apples versus oranges, based on the one shared characteristic of their both being fruit."

The Union Brief continues (page 21) and argues that the City has not met its burden of proof because it did not produce any evidence of an abuse of the current procedures or the ability or inability to pay the costs of current benefits. The argument also states that there is no Quid Pro Quo for a reduction of benefits. (I have paraphrased the paragraph at the top of page 21).

The central paragraph of page 21 argues a contrary view, that the Union has been in good faith on this matter by agreeing to deductible increases. The Employer's view will break the historical parity between the police and fire unions. The paragraph refers to an arbitration decision involving the City of Waukesha, and also argues that the salary information provided by the City in its Exhibit 5 has the effect of demonstrating the ongoing parity between the two units which now (for the

first time ever) the City is attempting to change.

8) The Union Brief at the bottom of page 21 refers to an arbitration decision involving the Antigo School District wherein Arbitrator Malamud set out the following tests which should be met before a proposal is allowed to change the status quo:

"(1) The party proposing the change must demonstrate a need for the change.

(2) If there has been a demonstration of the need for the change, then the party proposing the change must demonstrate that it has provided a Quid Pro Quo for the proposed change.

(3) Arbitrators require that tests (1) and (2) be made through the submission of clear and convincing evidence by the party proposing the change."

9) The Union brief substantially concludes on pages 22 and page 23. The Union's arguments state: (paraphrased)

"(a) The Union met the burden of proof required by the foregoing tests and the City failed to do so.

(b) The Union's proposed clothing replacement language is presently in accord with the City's policy and would merely solidify an existing practice. The external fire department comparables sustain this change.

(c) The same "practice" argument sustains the proposal for the FLSA remedies. The Union argues a Quid Pro Quo by virtue of the increased health insurance deductible payments.

(d) The Union argues that the City pension/retirement language requiring eight percent (8%) payment is a long standing practice and if the Employer's language is approved the Union fears a potential reduction of unknown proportions. Besides there is not a Quid Pro Quo involved.

(e) The Union also argues a wrenching parity

dislocation between the Racine Police and Fire Departments of long standing. In addition the obvious reduction of benefits (which are inevitable) are arbitrary and do not result from any Quid Pro Quo.

10) Conclusion (p. - 23 Brief)

"The City has totally failed to consider the external comparables established by Arbitrator Gil Vernon in rejecting the Union's FLSA and clothing replacement proposals. For that matter, the City failed to produce any evidence of any other comparable municipal employer in our pool of comparables making health insurance or pension/retirement contribution cut-backs (except for West Allis which lost a similar case), such as those proposed by the City.

The Union's final offer is the more reasonable in that any costs incurred by the City in making the FLSA schedule equitable for all employees, is at least partially off-set by the Union's agreement to raise up-front deductible payments, and merely brings the clothing replacement language in line with its external comparables. In sum, the Union's proposals are equitable and modest. The City's proposal's are drastic and unsupported."

The conclusions recited above are at the end of the Union's Brief. I probably should have put those conclusions on the end of my review of the Union's arguments, but I have an additional subject matter, the Pension problem, requiring a reflection of the Union's attitude. I, therefore, now go to the Pension problem.

4. Pension - Article XV

(a) The Union argument on the matter of the pension problem runs from page 5 of its Brief to page 9 at the bottom. At the outset, page 5, the Union Brief recites again the current language in the contract, and below that, states the City proposal language, labelled a matter of "clarification". I have set forth previously

the current language and the modifications or clarifications proposed by the Employer. The Union proposes to leave the present language as is.

(b) A significant consideration here is the fact of the legislature reducing the minimum employer contribution in January 1991 from eight percent (8%) to seven and one-half percent (7½%) which percentages in the past have been mutually agreed to, and which the City of Racine has paid as the statute has required in the prior 20 some years. Generally, all other comparable cities have also paid the same percentage amount for their fire fighter's contributions. The reduction in January, 1991 from eight percent (8%) to seven and one-half percent (7½%) was apparently unexpected across the state, and has precipitated some contests requiring a determination of a continuing eight percent (8%) payment amount or a reduction payment to the seven and one-half percent (7½%) amount. Here, the City took the position in January, 1991 that the statutory reduction permitted (or required) them to reduce the contribution from eight percent (8%) to seven and one-half percent (7½%) which the Employer did. Ultimately, in April 1992, one of the employees investigated and found that the reduction had been made, and therefore, raised the issue in a grievance. The arbitrator's decision of the grievance ordered a continuation of the eight percent (8%) amount. The

matter subsequently (or immediately) came into the problem of the bargaining discussion and is one of the two primary problems raised by the employer demanding that its new "clarification" language be approved by this arbitrator. The new language requires that the City shall pay an amount up to (rather than an amount equal to) the figure of eight percent (8%), which is described in the present contract language. In addition, an added phrase states as follows: "As required by state mandate for each eligible employee." which makes the new language proposal read as follows:

"The City shall pay an amount (~~equal~~) up to eight percent (8%) of the salary of each employee as required by state mandate for each eligible employee participating in the Wisconsin Retirement Fund prescribed by Chapter 41, Wisconsin Statutes, as and for Employee contributions as established by Statutes." (emphasis added).

(c) The Union argues this would be a significant, potentially monumental, change, which is totally unjustified. The phrase "up to eight percent (8%)" worries the Union, that the Employer then has power to reduce its contribution much more substantially than just to the seven and one-half percent (7½%) amount. It may pay anything it wishes to. Therefore, the City bears a heavy burden proving such a potential or actual justification for such a change.

The Wisconsin Retirement Fund, promulgated by the legislature, does require employer contributions, per se, and contributions on behalf of employees (or by

employees) which are negotiable so long as those employee contributions are at least the required minimum. The parties may mutually agree to pay the minimum or percentage thereof, or in excess of the minimum required by the statute language. The Union Brief cites the decision in the City of West Allis A/P M-91-279, a copy of which has been supplied by the Union.

(d) It is a fact that the City of Racine unilaterally reduced its contribution level as of January 1991 from eight percent (8%) (which is in the contract language) to seven and one-half percent (7½%) which is the new minimum contribution required by the Statute since January, 1991. The Union argues that the contract language is clear and unambiguous, and is predominant, and requires a continuing payment of eight percent (8%) as ordered by the Grievance arbitrator. The Union refers to this pension item as a dispositive item in this interest arbitration matter, and refers the arbitrator to its arguments in the grievance matter and its supplemental brief on the Pension subject. The Union further argues that the actual cost incurred by any sort of reduction by the City would be difficult to assess, and whatever it might be if it went below the required contribution amount, the employees would have to make up the difference out of their own pockets, which may wipe out salary increases for years to come.

The Union has supplied excerpts of the pertinent language from several other cities including Wauwatosa, Waukesha, Janesville, West Allis, Kenosha, and Madison. The conclusion regarding those comparables is found in a paragraph at page 9. It states as follows:

"Indeed, a review of the external comparables' contracts reviews that only the City of Racine -- if its proposal on this subject were accepted -- would have the discretion of paying less than the full employer-employee package contribution rate. Moreover, the City's change would break parity between the City of Racine Police and Fire Departments on this issue."

(e) Counsel for the Union proposed a Motion on 12 July, 1993 attaching the Grievance decision in the grievance case, A/P M-92-452, of the Pension amount (8%) which was decided in favor of the Association. The Motion of counsel was to submit/admit the attached arbitration award as evidence. I acknowledged that I had no objection to receiving that award as well as arguments of counsel, even though the Employer's counsel strenuously objected to that decision coming in as evidence. I am not going to set forth here comments with regard to the grievance decision. I have other thoughts about the interpretation of the Article XV language, titled Pension. I will express them in my conclusions of this matter.

(f) A copy of the Union Brief submitted to the arbitrator in the grievance matter was supplied here, (it contains 9 pages) and argues extensively for the

interpretation of the present language to maintain the eight percent (8%) amount of employee contribution. The first heading is Statement of Facts on page 2 and the top of page 3. The Union Brief asserts that the parties may negotiate anything above the minimum contribution requirement of the statute. On page 3, the Union Brief states the issue and commences its argument. The essence of that argument refers to the phrase "equal to eight percent (8%)" (of employee wages) and, therefore, that is the answer to the question no matter if the legislature reduces the percentage amount. The Union cites a similar grievance arbitration decision in the City of West Allis issued in 1992 which upholds the same conclusion here.

The Union argues that the language in the previous contract, before us here, is clear and unambiguous and should be followed.

The Union Brief contrasts the West Allis language with the present language here on page 4 of its Brief as follows:

"The chief difference between the West Allis case and this one is that the city in West Allis argued that its interpretation should be adopted because it was clearly intended by the parties that the employer would pay 100% of the state-mandated employer/employee contribution -- whatever that amount might be. See City of West Allis, supra, at pp. 3 and 5. Arbitrator Reynolds characterized the City's argument as "attractive" (at p. 5), but did not believe it overcame the clear and unambiguous language of the contract." (eight percent (8%))

The Brief here then continues to argue the weakness of the City of Racine position in the grievance matter --

that Racine City does not even have an "attractive" alternative interpretation to this matter. It further recites that the City's witness, James Kozina, expressly denied the City's obligation to pay even 100% of the Employee contribution, whether that rate was set by the WRF at seven and one-half percent (7½%), eight percent (8%), or one percent (1%) of an employee's salary. The Union Brief then refers to Joint Exhibit 4 (in the grievance matter) that the City's final offer for a successor labor agreement ranges from the long standing language on this issue which would apparently permit the City to pay any amount up to the eight percent (8%) figure established in the contract language. The Union Brief, page 5, argues that this is not a clarification as contended. It is a significant change, and even fails to guarantee a payment equivalent due the employer/employee contribution "mandated by the WRF." The next sentence on page 5 says:

"In essence, the City is arguing that although it has been a past practice of the Employer to pay 100% of the percentage formula set by the Wisconsin Retirement Fund, it really did not have to do so, and in the future may not do so."

On page 6 of the Union Brief; it argues that "...Up to eight percent (8%)" surely does not mean "...equal to eight percent (8%)." The last paragraph commencing in the middle of page 6 of the Brief and running over to two lines at the top of page 7, states that when the Union

grieved the unilateral cut-back (reduction) the City responded by proposing the up to eight percent (8%) language in this present "interest" matter and thereby gave itself total discretion to determine whatever amount it would pay for future employee contribution amounts. Page 7 of the Brief recites a definition of unambiguous language from a treatise titled, Labor and Employment Arbitration, edited by Boonstein and Gosline (Matthew Bender, 1992), at §140.01(3), Professor J. Grenig summarized the applicable principles and then described the clear and unambiguous language concept. On the following page 8, the Union Brief refers to "How Arbitration Works" (BNA, 4th Ed.), Professors Elkouri and Elkouri state, at p. 354:

> "When one interpretation of an ambiguous contract would lead to harsh, absurd, or nonsensical results, while an alternative interpretation, equally consistent, would lead to just and reasonable results, the latter interpretation will be used. Where the extreme position so both parties would have produced absurd results, an arbitrator rejected both and arrived at his own interpretation of the disputed provision."

On page 9 is the CONCLUSION of this brief and it states:

> "The clear and unambiguous language of the contract between the City of Racine and Local 321, IAFF compels the conclusion that the City has an obligation, until such time as the language may be changed, to pay eight percent (8%) of each employee's salary into the Wisconsin Retirement Fund.
>
> With respect to remedy, and using the West Allis decision for guidance, the Union requests that the City of Racine be ordered to make the employees whole by a retroactive makeup contribution from whatever date the City reduced it's eight percent (8%) contribution to a

lesser amount, and prospectively, to continue to pay eight percent (8%) until a successor agreement containing some other rate is reached."

That concludes the recitation or analysis of the second significant Brief on the subject of the Pension problem alone which I may have originally referred to as the "Brief" submitted in the grievance arbitration matter. Some of the language in the Brief indicates otherwise, and it may have been prepared and submitted as a secondary Brief in this present interest arbitration. In any case, the arguments are appropriate to the problem, of the Pension dispute.

I have now concluded the arguments of both parties.

V. DISCUSSION - FINDINGS - CONCLUSIONS

"The Arbitrator will proceed by analyzing each issue separately. After it is decided which offer is preferred on the individual issues vis-à-vis the various statutory criteria, the offers will be considered as a whole weighing the individual issue preferences against each other." (I believe I have previously indicated that I was following the format of the Gil Vernon decision of 1985.)

1. Clothing allowance.

The Union proposal is to add language which states: "The City shall pay the cost of repairing or replacing uniforms and equipment damaged in the line of duty." The Union demand is not unreasonable. It is very reasonable. I, therefore, find and conclude that the policy language of the Employer is

undoubtedly appropriate in a general sense, but it might potentially tend toward a bit of pettiness in some circumstances. Obviously, if any of the fire fighters have a disregard for the uniforms and equipment, and damage the same due to significant negligence or lack of responsibility in the use of these items, the Employer is perfectly reasonable in demanding that the burden of cost or repair shift to the employee. The Management Rights Clause permitting the Employer to raise the issue here is always a possibility and may always apply the "reasonableness" criteria requirement and cause the matter to fall into the Grievance Procedure. My general instinct is that firemen, given the kind of occupation they perform, must have appropriate equipment and working uniforms in order to properly perform their functions and prevent injuries. I think most parties can live with this additional language without great trouble.

2. Work Period - Article XXVII (p. 31)

The Union proposes new language for this Section 7 Work Period phrase under the Overtime pay provision designated as Article XXVII commencing on page 31 of the contract. The Work Period clause is on page 33 of the contract. The Union's modification of the language would simply be to refer to the 1985 amendments instead of the 1974 amendments and state that;

"The starting dates for the work periods of the respective shifts shall commence as of the time each shift finishes the twenty-seven (27) work day period it was working at the time the agreement was ratified or an interest arbitration award is issued."

The City prefers the current language which is; "defined as twenty-seven (27) consecutive twenty-four (24) hour periods commencing on January 1, 1976." Again, this is similar to the clothing allowance problem and is not a significant or detrimental change as far as the City is concerned. There is no money difference here that I can see. The Employer has no significant objection to the adoption of the new language.

Therefore, both of the issues advocated by the Union are easy to approve. Neither is costly and both perform a reasonable function about which the City has no strong criticism.

I now move to analyzing the Final offer of the Employer which includes its arguments on the following:

3. The Coordinated Care Program incorporated into the Medical Insurance Plan referred to in Article XIV Insurance p. 15 - 16 - Contract.

4. The Pension amount of the employee contribution - promulgated by the Wisconsin Legislature - and referred to by the Pension language in Article XV - Pension - p. 16 - Contract.

Employee's <u>Final Offer</u> -

1. Pension Payment - Employee's share

2. Modification of the Health Insurance Program by imposing the Coordinated Care Program.

The Pension Payment amount totally supports the Employer's side; but the intrusion of the Coordinated Care

Program is an absolute potential catastrophy for individuals subject to its application.

This is clearly a Hobson's choice. The pension matter, by itself, totally requires a decision for the Employer's final offer, but the inclusion of the Coordinated Care Program is so offensive that it nullifies that conclusion and requires a finding and preference for the Union's offer.

Pension Payment

The grammatical analysis of the sentence (Article XV Pension, p. 16 - C) requires a conclusion that the subject of the sentence is not the reference to the 8% figure: it is the phrase at the end of the sentence "... as established by Statutes."

The parties signed the prior existing contract on August 27, 1990 (p. 43 - C)(Employer's Exhibit #11). My understanding is that the Wisconsin Legislature enacted the reduced 7½% figure sometime in the latter part of 1990, to be effective as of January 1, 1991. I do not know the Legislative History of the reduction of the Employee Pension contribution. However, that is undoubtedly available; especially, as to when the bill was signed or sent up to the Governor for his signature. I imagine that both parties here would not have signed the 1990-1991 Contract on August 27, 1990, had they known then of the potential change. Certainly, the Union appears to have been surprised, since the Grievance arose in April of 1992. The Employer here acknowledges that

it reduced the contribution as of January 1, 1991, when the new statute figure became effective. Therefore, the City must have been aware of the legislation.

The 8% figure was in effect from 1975 (stipulation) until January 1, 1991. The parties have also stipulated that except for the West Allis decision (and litigation) no other comparable contract establishes any mutually agreed to excess over the present statutory amount of 7½%. Therefore, the Employer argues that its position of paying the lesser amount, 7½%, is appropriate from both criteria; the statutory figure and the lack of any contrary agreement. I completely agree with the Employer.

The Union view is an attempt at "backing into" a windfall. Neither party has previously prevailed in securing contract language which provides for a larger or lesser figure deviating from the then current statutory figure.

The history shows that the Wisconsin Retirement Fund originated in 1973 with a 6½% amount, which increased to 7% in 1974 and then to 8% in 1975, until the 1991 reduction to 7½%. Both parties here stipulated that they had previously agreed to follow the statutory figure which existed until now. Therefore, a significant prior history establishes a solid pattern of mutually following the statutory figure. I conclude that the pattern is significant; and that the statutory figure itself is an established criteria due to the consideration of Legislative power representing the population

as a whole.

Normally, a statutory prescription is inviolate. I have no objection here, however, to acknowledge validity of the claim of discretion permitting the parties to negotiate a larger than statutory percentage; provided that the mutually agreed upon language must be clear and convincing. Such language must be sufficiently contradictory of the established status quo between the parties (the Contract language) and the statutory figure itself.

Therefore, in conclusion regarding the pension dispute, I concur totally with the Employer's action of reducing the 8% amount to the 7½% amount as of January 1, 1991. The then existing (and present) language of the contract - Article XV - especially the last phrase "... as established by Statutes ..." is the power source actually compelling the reduction, unless the parties had mutually agreed otherwise.

Before leaving this matter permit me to observe also that the parties achieved an obvious meeting of the minds - mutually- as to the 8% amount, (and the prior amounts of 6½% and 7%) which was then in effect during their negotiations (during 1990) of the 1990-1991 Contract, Employers Exhibit #11. The Employer immediately adjusted the contribution percentage figure as of January 1, 1991, therefore, being obviously aware of the statutory change. The Union claims to have been surprised in April, 1992 when the Grievance surfaced. Impliedly, the Union was not aware of the statutory

change until April, 1992. I suppose it is appropriate to also argue that the Union must be presumed to know the law, even as of the instant of change. Generally, "knowing" the law is not always a reasonable presumption, but in this circumstance, where the Parties have mutually made such an explicit reference to the Pension Statute via the phrase I have referred to, the Union has the burden of "knowing" and also expecting such a reduction.

On the other hand, the Union may clearly argue on its behalf that the statutory change of the Employer Pension contribution nullified the Contract Language - Article XV - since the 8% figure was specifically stated, and, therefore, the fact situation changed the meeting of the minds, and put the question of "how much" in limbo. I cannot apply that argument. The requirement of the continuation of the Contract and the Statute compels payment, either 8% or 7½%. I must fall on the Employer's side of the dispute for the reasons stated above.

A final observation on this Pension matter requires emphasis of my finding that the phrase at the end of the sentence "... as established by Statutes." solves the problem in favor of the Employer's demand. The proposed phrase of the Employer "...as required by the state mandate for each eligible employee..." is not really needed. I regard it as being redundant. I do acknowledge that the word "mandate" or "State mandate" or "as required by State mandate" may tighten

the screws more, but I do find that the existing phrase "as established by Statutes" does that by itself.

The Insurance Dilemma
Article XIV - (pp. 15-16 - Contract)

The Employer proposes an additional sentence to Section 1 of Article XIV - Insurance - to wit:

> "Employees shall participate in the Coordinated Care Provisions of the coverage. Effective January 1, 1993, all eligible members shall be required to satisfy an annual up front health insurance deductible of $100.00 individual and $300.00 family." (New language intentional.)

The parties have agreed to the added deductible amounts described in the second sentence above. Therefore, only the prior sentence (above) is disputed. That disputed sentence may attach to the end of the first paragraph or it may preceed the second paragraph of the first section of Article XIV - Insurance on page 15-c which heading is "1. Medical and Hospitalization."

That first paragraph states that:

> "On the first day of the month following employment every member of the unit shall be provided during the life of this contract with medical and hospitalization insurance coverage equal to the Blue Cross- Blue Shield Series 2000 Plan."

city Exhibit #3 is a manual containing the proposed new Coordinated Care Program on pages 17, 18 and 19. The manual is titled "Your Group Benefits." It is apparently published and administered by the Wausau Insurance Companies for the employees of the City of Racine. It is also stated as "Group Health Plan for Employees of City of Racine."

The Table of Contents is the first two sides of the first page of the manual referred to as 06-92 on both sides. The Health Plan

is found on page 1, in its entirety. Under a title heading of "Termination of Plan" is the following sentence:

> "The right is reserved for the plan administrator to terminate, suspend, withdraw, amend or modify the plan in whole or in part at any time, subject to the applicable provisions of the benefit plan and the term of any applicable collective bargaining agreements."

I find no explicit details of coverage in the Labor Agreement - Collective Bargaining Agreement. Therefore, the Termination Plan language seems to be anything the Administrator wishes. That is also true of the Coordinated Care Program - pages 17, 18 and 19 of the manual. The Associations' Brief, pages 14-23 describe the details of the new program and also describe its criticisms of the program.

I concur with the Associations criticisms. One illustration - p. 19 - Union Brief:

> "The language contained in the program (Coordinated Care Program) almost makes it sound as if the MEI administrative requirements constituted patient services rather than restrictions. In fact, however, the program subjects employees to pre-admission notification penalties; pre-surgery review, hospitalization restrictions, and potential loss of benefits."

The program proposes a $200.00 penalty for failing to notify - (procedures) such as -

1. Pre-admission Notification of all Hospital Admissions,
2. Pre-admission Notification of all Skilled Nursing Facility Admissions, Home Health Care and Hospice Service,
3. Pre-surgery Review,
4. Due Date for Delivery,
5. Individual Case Management (page 18 of program)

and a variety of other potential restrictions which seem to

actually overrule and second-guess the primary physicians' judgment and preferred approach to the medical problem.

I fear for the application of this program. I cannot in good conscience approve of it. It is potentially far more costly; (i.e., saving of costs) than the Union's proposed 8% Pension contribution. The Employee's may not be given appropriate Medical Treatment. Collective Bargaining Agreements hope to define and describe finite results, such as wage rates. The proposed "Program" introduces the opposite. It plainly seeks to distort appropriate medical judgments in order to reduce expenses.

I have no quarrel for reducing medical expense; but this proposal appears to provide with one hand and refuse with the other. It is clearly not a preferred illustration of Contract results of clarity. It obfuscates, confuses and contradicts the meaning and intent of the other basic promises of the Medical Program.

For this reason alone, I must favor the Union's final offer and refuse the Employer's final offer.

Award

It is the finding and conclusion of the undersigned to select the Union's final offer and reject the Employer's final offer as described above. The 1992-1993 Collective Bargaining Agreement between the City of Racine and Local #321 of the International

Association of Fire Fighters shall include the final offer of the Union as submitted to the Wisconsin Employment Relations Commission.

Dated this 22nd day of March, 1994, at Minneapolis, Minnesota.

Martin E. Conway

Martin E. Conway
Labor Arbitrator
1600 East Minnehaha Pkwy.
Minneapolis, Minn.
55407
Phone (612) 729-3175

Final Offers – Union Brief

STATEMENT OF THE ISSUES

Four issues remain before the Arbitrator for resolution. The City of Racine and Local 321, International Association of Firefighters, have each proposed two modifications of existing contract language. The final offers of the Union and the City on each issue are set forth, in full, below.

A. Article XIV - Insurance

1. City Position.
   Add the following language to the current Section 1. "Employees shall participate in the coordinated care provisions of the coverage. Effective January 1, 1993, all eligible members shall be required to satisfy an annual up front health insurance deductible of $100.00 individual and $300.00 family."

2. Union Position.
   Add the following language to the current section 1. Effective January 1, 1993, all eligible members shall be required to satisfy an annual up front health insurance deductible of $100.00 individual and $300.00 family.

B. Article XV - Pension

1. City Position.
   Revise to read: The City shall pay an amount up to eight percent (8%) of the salary of each employee as required by state mandate for each eligible employee participating in the Wisconsin Retirement Fund prescribed by Chapter 41, Wisconsin Statutes, as and for employee contributions as established by the Statutes.

2. Union Position.
   Retain existing language.

C. Article XXVII - Section 7 - Work Period

1. Union Position.
For purposes of determining overtime payments under the Fair Labor Standards Act Amendments of 1985 affecting firefighters, the work period is defined as twenty-seven (27) consecutive, twenty-four (24) hour periods. The starting date for the work periods of the respective shifts shall commence as of the time each shift finishes the twenty-seven (27) work day period it was working at the time the Agreement is ratified or an interest arbitration award issued.

2. City Position.
Retain existing language.

D. Article XXIII - Clothing Allowance

1. Union Position.
Add the following clause: The City shall pay the cost of repairing or replacing uniforms and equipment damaged in the line of duty.

2. City Position.
Retain Existing Language.

CRITERIA TO BE UTILIZED BY THE ARBITRATOR IN RENDERING THE AWARD

Wisconsin Statute, sec. 111.77(6), sets out the pertinent criteria, as follows:

> (6) In reaching a decision the arbitrator shall give weight to the following factors:
> (a) The lawful authority of the employer.
> (b) Stipulations of the parties.
> (c) The interests and welfare of the public and the

financial ability of the unit of government to meet 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 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 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.

STIPULATION

Article XV of the labor agreement deals with pension for the City of Racine firefighters. Wehave attached a copy of the 1989-90 Wisconsin State Statutes, sec. 40.05 which created this pension system.

As referred to in the statute, the pension is comprised of two components. There is an employer contribution of 18.9% of salary which the City of Racine pays and is not affected by this dispute. The other component is referred to as the employee contribution. Historically many municipalities have in the course of collective bargaining, agreed to pay the employee contribution on behalf of the employees.

The City of Racine and Local 321 have had such an agreement for over twenty years. That agreement is set forth in Article XV of the labor agreement. The parties agree that they negotiated this contribution to reflect the City's willingness to pay the employee's share. That contribution rate was 6.5% in 1973. It increased to 7.0% in 1974 and to 8.0% in 1975. The State mandated that contribution level until 1991 when it was reduced to 7.5%. In 1991 the City reduced its employee contribution from 8.0% to 7.5% to correspond with the mandates of Wisconsin Statutes, sec. 40.05.

In April, 1992 Local 321 filed a grievance claiming that the City must contribute 8.0%. The parties agree that the City has never contributed more than the amount dictated by statute.

After the grievance was filed, the City included the proposed change in the contract on this item. The City claimed that the change was necessary to reflect the intent of the parties and to clarify the existing language. The Union rejected this proposal, deeming the new language as a departure from the clear and unambiguous language of the contract. The parties attempted to resolve this issue but were unable to do so.

The parties agree that if the City contributes 8.0% it will be the only city employee group where the City contributes more than the statutory required amount.

STIPULATED SET OF FACTS

Because of the 27 day work cycle, a C shift employee who wants a week off toward the end of the cycle, is subject to the loss of no more than one FLSA period (an average of $81.00). However, an A or B shift employee who wants to take a week off (close to the end of a cycle) will lose two periods. The current agreement is legal under the FLSA law, but creates the foregoing inequity.

The Union's proposal would move the end of the A and B shift cycles forward to the end of their 27 day work cycle. See EXAMPLE on p. 2 of Supplementary Exhibit 1, sec. B.

If, for instance, the arbitrator would issue his award in favor of the Union in November of 1993 and the award was implemented at that time, the A, B and C shifts would end respectively on November 28, November 25 and November 22. this would allow an employee on any shift to be able to choose his vacation at any time during his work cycle and be treated the same, for FLSA purposes, as any employee on any other shift. See calendar, Supplementary Exhibit 2.

This is the effect of the Wauwatosa language (an exhibit submitted at hearing, but also submitted herein as Supplementary Exhibit 3).

CITY OF RACINE

TABLE OF CONTENTS

TABLE OF CONTENTS (Continued)

CITY OF RACINE

HEALTH PLAN

City of Racine
730 Washington Avenue
Racine, Wisconsin 53403

Employer Identification Number 39-6005581
Plan Number 501

The following coverages are included in your plan:

Hospital	Radiology
Surgery	Major Medical
Medical	Home Health Care
X-ray, Laboratory, Anesthesiology	Special Benefits

Type of Administration: The plan is administered by the plan administrator, with benefits provided in accordance with the provisions of the employer's health plan.

Plan Administrator: City of Racine
730 Washington Avenue
Racine, Wisconsin 53403
(414) 636-9175

Agent for Service of Legal Process: City of Racine
730 Washington Avenue
Racine, Wisconsin 53403

The plan is maintained pursuant to one or more collective bargaining agreements. A copy of the agreements may be obtained upon written request to the plan administrator, and such agreements are available for examination.

Employees are eligible to participate in the plan in the following manner:

Present and future full-time employees shall be eligible for coverage the first of the month following date of employment.

If you are not at work on the day your coverage would otherwise become effective, your coverage will become effective on the first day of the month coinciding with or following the date you return to work on a full-time basis.

Termination of Plan

The right is reserved for the plan administrator to terminate, suspend, withdraw, amend, or modify the plan in whole or in part at any time, subject to the applicable provisions of the benefit plan and the terms of any applicable collective bargaining agreements.

Cost - Your employer pays the entire cost for full-time employees and their eligible dependents.

Plan Funding Medium - Benefits are provided by a benefit plan maintained on a noninsured, unfunded basis by your employer.

The financial records of the plan are kept on a plan year basis ending on each December 31st.

participant, we will provide a defense to such action for the participant. We will pay the cost of the defense, taxable court costs and will satisfy any judgment or settlement reached.

The participant, or the employee on behalf of the participant, or a responsible party on behalf of the participant, shall actively cooperate and participate with us in the defense of such suit. The cooperation and participation includes, but is not limited to, immediately furnishing us with copies of all legal process; providing requested information; assisting in securing and giving evidence, including attending conferences, hearings and trials and assisting in obtaining the attendance of other witnesses at legal proceedings related to the dispute. We shall have the right to settle a dispute or suit at any stage of proceeding or continue a suit, once commenced, through ultimate appeal.

PREDETERMINATION

A request for an advance determination as to whether a treatment, service or supply is a covered service may be submitted in writing to Wausau Insurance Companies. If medical review is necessary such review shall be performed by our designated Medical Management Consultant(s) (MEI, Inc.).

When prior written request for advance determination has been approved, benefits shall be paid if the participant's coverage is currently in force and if such approval has not expired at the time such treatment, service or supply is provided.

CLAIM APPEAL PROCEDURES

When a claim for benefits is received by us, the participant will receive a written notice from us within 30 days (unless special circumstances require an extension) explaining the specific reason(s) for payment or non-payment of a claim. If a claim is denied because of incomplete information, the notice will indicate what additional information is required. Questions about our decisions can be directed to us for additional explanation.

If a participant still disagrees with our decision regarding payment or denial of a claim, the participant may appeal our decision. The appeal for review must be in writing to us and must be received by us within 60 days after the participant received notification of the denial of benefits. The appeal must be identified as a claim appeal and must provide pertinent information such as: identification number, date and place of service, name of participant, and reason for requesting the review.

After being reviewed by us, a written decision, including reasons, will be provided within 60 days of receipt of the appeal. If there are special circumstances requiring an extensive review, the final decision will be made within 120 days of receipt of the appeal.

In all cases, the participant retains the right to be represented by a lawyer at any time. After the appeal process has been completed, the participant has the right to take the case to civil court.

COORDINATED CARE PROGRAM REQUIREMENTS*

The Group Health Plan for employees of the City of Racine includes a Coordinated Care Program which has been designed to promote access to efficient and high quality care. Specially trained Health Care Coordinators, who are all licensed Registered Nurses, and physician consultants are available to help you and your physician plan your medical care. The final choice on your medical care is always determined by you and your physician. However, your participation is this program is required for you to receive the full level of benefits available through this medical plan.

The program reviews and authorizes inpatient hospital care, if medically necessary or recommends a more appropriate alternative of medical care. The program also reviews the necessity of other selected medical services and provides Individual Case Management services for complicated or long term health problems.

As part of this program, you are required to notify MEI of the following:

(A) All hospital admissions at least four business days in advance (within 72 hours for emergencies; as soon as possible if admitted for delivery);

(B) All skilled nursing facility admissions, home health and hospice services;

(C) All surgeries, both inpatient and outpatient;

(D) Due date for delivery.

NOTIFICATION PROCEDURE

The number to call for all notification requirements is 886-7333 in Racine and 1-800-827-6730 outside of Racine. Please do not use the 800 # within Racine. Office hours are 7:30 a.m. to 5:00 p.m., Monday through Friday.

When you call, you will be asked for the following information:

(1) Employer

(2) Employee Name

(3) Employee Identification Card Number

(4) Home Address and Phone Number

(5) Patient Name

(6) Patient Date of Birth

(7) Admission Date (if applicable)

(8) Reason for Admission (if applicable)

(9) Hospital (if applicable)

(10) Physician's Name

(11) Physician's Phone Number

More specific information about notification procedures is outlined below. Failure to follow notification procedures for hospital admissions, surgeries, home health, hospice or skilled nursing facility services may result in a $200 penalty per occurrence.

(A) PREADMISSION NOTIFICATION OF ALL HOSPITAL ADMISSIONS**

For nonemergency admissions, you are responsible for notifying MEI four business days prior to admission. (For emergency or urgent admissions, you must notify MEI within 72 hours after admission.) The Health Care Coordinator and physician advisors will determine if the admission and length of stay requested seem appropriate.

**NOTE: For maternity, you are requested to notify MEI twice--as soon as your physician has determined your due date, as well as when you actually enter the hospital.

(B) PREADMISSION NOTIFICATION OF ALL SKILLED NURSING FACILITY ADMISSIONS, HOME HEALTH CARE AND HOSPICE SERVICES

The procedure for hospital admission (outline above) should be followed.

(C) PRESURGERY REVIEW

Notify MEI at least four days in advance of any surgical procedure (includes inpatient AND outpatient surgeries). MEI will review the indications for surgery, will determine if a second opinion is required and may advise surgery be performed in the outpatient setting if appropriate. If MEI requires you to obtain a second opinion, the physician and related diagnostic charges for the second opinion will be paid in full without regard to deductibles, coinsurance, or usual and customary limits. The second opinion must be obtained from a physician qualified to render and opinion as determined by MEI. If MEI does not recommend a second opinion, but you would like to obtain one, usual plan benefits apply.

(D) DUE DATE FOR DELIVERY

You are required to notify MEI of your due date as soon as your physician has verified pregnancy.

(E) INDIVIDUAL CASE MANAGEMENT

Individual Case Management is a service provided to you to assist in coordinating high quality services for complicated and/or long-term medical problems.

MEI's Health Care Coordinators will assist you by:

COORDINATED CARE PROGRAM* (Continued)

(1) Working with the attending physician to assess your condition and medical needs;

(2) Contacting consultants when further evaluation is necessary;

(3) Monitoring your progress;

(4) Acting as an information resource for patient and family on alternatives to care such as home care or skilled nursing facility care;

(5) Acting as patient advocate with providers.

*These requirements apply to some employee groups while they are not required, but recommended, for other employee groups. Please refer to the information printed on your Identification Card.

best efforts to select a mutually agreeable Arbitrator If the City and the Union are unable to agree on an Arbitrator within thirty (30) days either party may request the Wisconsin Employment Relations Commission to prepare a list of five (5) impartial Arbitrators The Union and the City shall then alternately strike two (2) parties each on the slate with the party filing the grievance exercising the first and third strikes The Union and the City shall exercise their strikes within fifteen (15) days following the receipt of the slate from the WERC The remaining Arbitrator on the slate after the strikes shall then be notified of his/her appointment as Arbitrator in a joint statement from the City and the Union

5 Scope of Award The decision of the Arbitrator shall be limited to the grievance and shall be restricted solely to the interpretation of the Agreement and such past practices as are existent in the Department unless said practices have been modified pursuant to Article VI of this Agreement The Arbitrator shall not modify, add to or delete from the express terms of this Agreement or past practices unless said practices have been amended pursuant to the terms of Article VI of this Agreement The determination of the Arbitrator shall be final and binding upon the parties

6 Costs The losing parties shall bear all costs of arbitration, except those incurred by the winning party for the presentation of its case Attorneys' fees shall not be included in the costs of arbitration If either party orders a transcript, the transcript cost shall be paid by the loser, including the cost of one (1) original transcript for the Arbitrator, one (1) copy for the City and one (1) copy for the Union

7 Steps and Time Limits The parties agree to follow each of the foregoing steps in the processing of a grievance If the City fails to give a written answer within the time limits set out for any grievance, the employee may immediately appeal to the next steps Grievances not processed to the next step within the prescribed time limits shall be considered dropped and waived

ARTICLE XIII
Results of Union Elections

The Union shall provide written notification to the Chief Personnel Director and the Labor Negotiator (listing the name, titles and addresses of the Executive Board) within fourteen (14) days following the election of the Executive Board

ARTICLE XIV
Insurance

1 Medical and Hospitalization On the first day of the month following employment every member of the unit shall be provided during the life of this contract with medical and hospitalization insurance with coverage equal to the Blue Cross - Blue Shield Series 2000 Plan The City shall pay the full family and individual premiums The City may from time to time change the insurance carrier and/or self-fund its health care program if it elects to do so if such change provides equivalent coverage

Effective January 1, 1991, all eligible members of the bargaining unit shall be required to satisfy an annual, up-front health insurance deductible of $75 00 per individual, $225 00 aggregate This deductible provision shall also apply to Sections 3 and 4 below for those employees active on January 1, 1991, and are subsequently covered under said Sections 3 and 4

2 Life Insurance The City shall pay for the cost of the State of Wisconsin Group Life Insurance Plan for each employee Retired employees shall be covered by the Wisconsin Group Life Insurance Plan, subject to eligibility rules established by the state

3 Continued Insurance The City shall pay the premiums on surgical, hospital and major medical insurance for any Fire Fighter who is forced to retired by virtue of duty incurred injury or disease, and for any Fire Fighter who retires at age fifty-two (52) or over with twenty (20) years or more of continuous service immediately preceding ...ement In the event that a retired Fire Fighter who is entitled to insurance benefits under

the provisions of this Section 3 dies leaving dependent survivors, those survivors shall be entitled to health insurance under the provisions of this Section 3 until such time as single dependents exceed the age for dependent coverage under the terms of the City's health insurance policy or until the widow/widower of the deceased Fire Fighter shall remarry, obtain other health insurance coverage, or be covered under Medicare or Medicaid health insurance, whichever event first occurs

The City shall pay the premiums on surgical, hospital and major medical insurance for the employee widow/widower and/or dependent survivors of any Fire Fighter who dies or becomes disabled by virtue of non-duty related injury or disease provided that the Fire Fighter has at least fifteen (15) years of continuous service with the Department This privilege shall terminate upon the remarriage of the widow/widower and/or upon the dependent survivors reaching the age of twenty-five (25) years

4 Widows and Dependents Widows and dependent survivors of employees not covered under Section 3, above, may continue under the City's medical and hospitalization insurance program in accordance with the terms and conditions of that insurance plan provided that the widow and/or dependent survivors pay the premium for said coverage This privilege shall terminate upon the remarriage of the widow and/or upon the dependent survivors reaching the age of twenty-five (25) years

ARTICLE XV
Pension

1 Chapter 41 Pension The City shall pay an amount ~~equal~~ up to to eight percent (8%) of the salary of each employee/participating in the Wisconsin Retirement Fund prescribed by Chapter 41, Wisconsin Statutes, as and for employee contribution as established by Statutes

ARTICLE XVI
Vacation Scheduling Procedure

The vacation schedule shall be determined as follows

1 Designation of Periods In December prior to the vacation year, the Chief of the Department shall determine how many employees can absent themselves during vacation periods and designate the periods

2 Selection of Vacations Departmental seniority from date of appointment shall be used in choosing vacations The departmental seniority shall be on a platoon basis

ARTICLE XVII
Vacation Benefits

Members of the unit shall be entitled to a vacation with pay as follows

1 40-Hour Week Fire Fighters who work a 40-hour week

½ day per full month up to November 1 - not to exceed 5 days
10 days after 1 year
15 days after 10 years
17 days after 15 years
20 days after 18 years
25 days after 24 years

2 56-Hour Week Fire Fighters on platoon duty who work a 56-hour work week

⅓ day per full month up to November 1 - not to exceed 3 work days
6 work days after 1 year
9 work days after 10 years
10 work days after 15 years
12 work days after 18 years
15 work days after 24 years

Vacations shall be scheduled to commence on the first work day of a nine (9) day cycle

3 Dispatchers Fire Fighters working the Dispatch schedule set forth at Article XXVI

City Position — Enlarged language

3rd - new line "as required by state mandate for each eligible employee"

Union Says retain above! Art XV - Pension

Art. XV - 1. Chap 41 Pension (New: as demanded by Employer) Enlarged language by Employer

// The City shall pay an amount up to eight percent (8%) of the salary of each employee as required by state mandate for each eligible employee participating in the Wisc. Retire Fund prescribed by Chap 41, Wisc. Statutes, as and for employee contributions as established by Statutes //

Forty and forty-two hour employees will nc .lly have a period of three days prior to which the Chief can automatically require a medical excuse before approving payment of sick leave However, this provision shall in no way limit the right of the Chief to require a medical excuse if the absence is for less than three days in the event of suspected abuse of sick leave benefits

Employees working on 8-hour work shifts shall accrue sick leave at the rate of eight (8) hours per month of service into a reserve sick leave account only during the month in which the employee has to his/her credit a total accrual of at least one thousand two hundred (1,200) hours (1,260 hours for 42-hour personnel) of sick leave in his/her basic sick leave account

Employees may accrue an unlimited number of hours in the reserve sick leave account An employee may not use the reserve sick leave account hours until he/she has depleted the number of hours in the basic sick leave account to zero (0) within twelve (12) continuing calendar months Employees hired after January 1, 1988 shall not be eligible for reserve sick leave bank benefits

Once an employee has depleted the number of sick leave hours to zero (0) in the basic sick leave account in accordance with the above paragraph the employee at his/her option, may transfer accumulated sick leave hours from the reserve sick leave to the basic sick leave account Once in the basic sick leave account, these days shall be treated the same as basic sick leave account days

4 Retirement Gratuity Effective January 1, 1983, upon retirement or death, a gratuity of fifty percent (50%) of base pay plus cost-of-living and longevity amounts for accrued sick leave hours to a maximum of 1,344 hours shall be paid to those employees working 24-hour shifts, to a maximum of 960 hours for employees working 8-hour shifts, and to a maximum of 1,008 hours for employees working 42-hour work week shifts

In the event of death of a member, this payment shall be made to the individual designated by him/her, or to his/her estate if he/she has no designated beneficiary

(Delete pay and add of language

ARTICLE XXIII
Clothing Allowance

Each member of the unit shall be paid a clothing allowance of Four Hundred Dollars ($400 00) during 1990 and 1991 Each new employee shall be paid an additional allowance of One Hundred Fifty Dollars ($150 00) upon completion of his/her first six (6) months of employment The purpose of this clothing allowance shall be purchase and maintenance of all uniforms and protective clothing and equipment which bargaining unit employees are required to possess as a condition of their employment It is agreed that if, in the future, any state or federal law or regulation is adopted which requires the City pay for new protective clothing and equipment, the above-enumerated clothing allowance shall be deducted from the City's cost for purchase of said clothing or equipment

1. The City shall pay the cost of repairing or replacing uniforms and equipment damaged in the line of duty

ARTICLE XXIV
Holidays

Members of the unit shall be granted nine (9) calendar days off per year in lieu of nine (9) paid holidays, such days not to be taken consecutively with the regular vacation period, except with the discretion of the Chief of the Department, provided, however, that such nine (9) calendar days shall be taken consecutively at a time within the discretion of the Chief of the Department Said nine (9) calendar days shall commence on the first scheduled work day of the nine (9) day work cycle

Members of the unit shall be granted nine (9) calendar days off per year in lieu of the following holidays

1 New Year s Day
2 Good Friday
3 Easter
4 Memorial Day
5 Independence Day
6 Labor Day
7 Thanksgiving Day
8 Christmas Day
9 Now Year's Eve Day

These calendar days are listed for the purposes of determining the accrual of holidays earned by employees working for the Department

ARTICLE XXV
Education Credits

Each regular full-time member of the Department who was hired prior to December 31, 1977 and who has successfully completed his/her probationary period of employment covered by this Agreement and who has obtained credits in a fire technology program at a suitable school or schools as approved by the Chief not later than the fall semester 1978, shall be paid an increase of two percent (2%) of his/her base pay for each seventeen (17) credits satisfactorily completed, and a total of eight percent (8%) of his/her base pay upon being issued a certificate of satisfactory completion of his/her entire sixty-five (65) credit course

Fire Fighters who are hired on or after January 1, 1978 or who enter the program after the fall semester of 1978, shall be paid the sum of Fifty Cents ($.50) per credit per month for credits earned in the program of a suitable school or schools as approved by the Chief Increases in amounts of payments being made to a Fire Fighter shall be made upon successful completion of each complete unit of seventeen (17) credits That is, amounts paid under this educational incentive program will be adjusted upon successful completion of seventeen (17), thirty-four (34) and fifty-one (51) credits and upon receipt of the Associate Degree

Payments shall commence upon successful completion of the one (1) year probationary period of employment but shall not be retroactive to the date of employment

Education credit payments shall commence effective as of the date of successful accomplishment of the requisite credits These payments shall be divided equally with each payroll period each month commencing with the first day of the month immediately following that in which the successful completion of the requisite credits took place

ARTICLE XXVI
Work Week

The normal work week for all employees who perform fire fighting duties shall be an average of not more than fifty-six (56) hours, computed over a period of one (1) calendar year The platooning of all employees shall be established by the Chief of the Fire Department Each platoon shall work its fifty-six (56) hour week as follows Work one (1) 24-hour period, have one (1) 24-hour period off, work one (1) 24-hour period, have one (1) 24-hour period off, work one (1) 24-hour period, and have four (4) 24-hour periods off Dispatch hours shall be 14 14, 10 10

ARTICLE XXVII
Overtime Pay

1 Definition Members of the Department in grades up to and including F-5 5, who are called back to fill the minimum daily requirements of the Department or are called back to perform line fire fighting duties (which would exclude, for example, fire inspection or other non-emergency work) shall receive overtime pay for time worked in excess of their regular work week at one and one-half (1½) times their regular rate, they shall be paid for such overtime work a minimum of four (4) hours at one and one half (1½) times the rate of pay which they receive for performing their regularly assigned duties

Such overtime rate of pay shall be established by dividing the individual's bi-weekly salary by 112 for an individual working

a 56-hour work week and by 84 for an individual working a 42 hour work week No overtime shall be paid unless the individual is performing duties assigned to him by the Chief

2 Definition of On-Call Shift The On-Call Shift shall be determined in accordance with the following table

	on		on		on	off	off	off
duty	call	duty	call	duty	call	duty	duty	duty

All On-Call Shift personnel shall be available in the event of emergency any other provisions in this Paragraph notwithstanding

3 Minimum Hours Employees called in for overtime work, other than under the circumstances set out in Paragraph 1 of this Article, shall be paid a minimum of four (4) hours of pay at a rate of pay per hour based on their hourly rate or at the time and one-half rate, whichever is the higher amount

A Extended Work Day Any employee required to continue working after his/her regular quitting time shall be paid overtime pay for only the actual time worked beyond his/her regular quitting time and shall be paid for such overtime work at one and one-half (1½) his/her regular rate of pay

4 Scuba-Diving Pay Employees called in for scuba diving work shall be paid in accordance with the Minimum Hours provisions of Paragraph 3 of this Article XXVII Employees performing scuba diving work during their shift shall receive no additional pay for the scuba diving work

5 Fire Alarm Dispatcher When a regularly assigned Fire Alarm Dispatcher is absent from duty for the 9 00 p m to 7 00 a m shift, fire dispatch overtime shall be distributed equally among all qualified employees

An employee, certified as qualified to run the switchboard, shall be recalled in alphabetical order, to operate the switchboard during the 9 00 p m to 7 00 a m shift

His/her pay for the shift worked shall be at time and one-half (1½) his/her regular rate or the switchboard rate whichever is higher

When the Fire Alarm Dispatcher is absent from duty during the 7 00 a m to 9 00 p m. shift, his/her position shall be filled by an on duty employee certified as qualified to run the switchboard He/she may be allowed to work this shift (fourteen (14) hours) in lieu of his/her regular twenty-four (24) hour shift Any employee filling this position shall be paid as if he/she had actually worked his/her regularly scheduled full twenty-four (24) hour shift

6 Court Time In the event an employee is subpoenaed to testify in court on a Racine Fire Department job related matter and such testimony takes place outside of the employee's regularly scheduled work shift, the employee shall be paid a minimum of four (4) hours of pay at a rate of pay per hour based upon his/her hourly rate, or at the time and one-half (1½) rate, whichever is the higher amount In the event such testimony takes place during the employee s regularly scheduled hours, he/she shall receive his/her regular rate of pay and turn over any witness fees received to the City

7 Work Period For purposes of determining overtime payments under the Fair Labor Standards Act of 1974 Amendments affecting Fire Fighters, the work period is defined as twenty-seven (27) consecutive, twenty four (24) hour periods commencing on January 1, 1976

8 Reopener In the event that the City is required by law to make additional payments for hours worked in excess of an average work week, which is less than the present 56-hour average work week, this contract may be reopened at the option of the City to revise this contract so that the City is not liable for any additional wage payments for the present regular work week

9 Recall Procedure Members shall be called back at the discretion of the Chief Recalls shall be by alphabetical order with the exception that newly hired members will be by-passed

Local Union Language