ARBITRATION OPINION AND AWARD

In the Matter of Arbitration Between CITY OF BROOKFIELD And BROOKFIELD PROFESSIONAL FIREFIGHTERS ASSOCIATION, LOCAL 2051, IAFF, AFL-CIO	WERC Case 87 No. 46973 MIA-1702 Decision No. 27496-A

Impartial Arbitrator

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Hearings Held

Brookfield, Wisconsin
April 2, 1993
May 6, 1993

Appearances

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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the City of Brookfield and the Brookfield Firefighters Association, with the matter in dispute the terms of a three year renewal labor agreement covering the period from January 1, 1992 through December 31, 1994. There are a significant number of impasse items contained in the respective final offers of the Employer and the Union.

After their preliminary negotiations had failed to result in a negotiated settlement, the Union on February 7, 1992 filed a petition with the Wisconsin Employment Relations Commission seeking final and binding interest arbitration pursuant to Section 111.77 of the Municipal Employment Relations Act. After preliminary investigation by a member of its staff, the Commission on December 7, 1992 issued certain findings of fact, conclusions of law, certification of the results of investigation and order requiring arbitration, and on January 7, 1993 the undersigned was appointed to hear and decide the matter as arbitrator.

A hearing took place before the undersigned in Brookfield, Wisconsin on April 2, 1993 and May 6, 1993, at which time the parties received full opportunities to present evidence and argument in support of their respective positions. Both parties closed with the submission of post-hearing briefs and reply briefs, and the record was then closed by the Arbitrator effective September 13, 1993.

THE FINAL OFFERS OF THE PARTIES

The final offers of the parties, hereby incorporated by reference into this decision and award, differ in the following described areas:

(1) The acting assignments impasse item arose in connection with the parties' agreement to insert contract language into the renewal agreement governing the use of Acting Lieutenants. They have been unable to agree with respect to the minimum amount of time that an employee must work in the Lieutenant classification to receive acting pay, and relative to when the City may use an Acting Lieutenant.

(a) The Employer proposes new contract language to provide in material part as follows: that if a Firefighter is temporarily assigned to perform the duties of a Lieutenant for more than two consecutive hours on a shift, he shall be paid for such hours at the start rate of pay for Lieutenants for such hours worked; and that the City has the option to assign an on-duty Firefighter or Engine Operator to Acting Lieutenant, to call in an off-duty Lieutenant for such assignment, or to operate without either an acting Lieutenant or an off-duty Lieutenant.

(b) The Association proposes new contract language to provide in material part as follows: that any Firefighter or Engine Operator assigned to perform the duties of a Lieutenant shall be compensated for such duties at the lowest step of the higher position for all hours during which he performs such duties; and that the use of "actors" shall not adversely affect the Employer's practice of assigning off-duty Lieutenants to fill in for absent Lieutenants.

(2) The personnel policies impasse item arose from the City's adoption of the Brockfield Personnel Policy and Employee Handbook during the term of the expiring labor agreement, and the parties differences with respect to the proper application of the policy and the handbook in relationship to the labor agreement.

(a) The Employer proposes no change from or amendment to the prior agreement in this area.

(b) The Association proposes that the Employer's Personnel Policy and Employee Handbook should be "...for general information purposes only," that it "..shall not be binding upon either the Union, its members, or the City," and that none of its provisions should "..constitute a waiver of the right to bargain by either the City of the Union."

(3) The EMT status of Firefighter Schwantes impasse item arose from the parties' negotiated agreement to withdraw a pending grievance involving the matter. The item remaining in dispute is principally the effective date beyond which Mr. Schwantes will no longer be required to maintain his EMT status.

(a) The Employer proposes that Mr. Schwantes maintain his EMT status until June 30, 1994, by which time he must obtain and maintain first responder defibrillation automatic (DA) certification as a condition of continued employment in the Fire Department.

(b) The Association proposes that Mr. Schwantes be deemed not to hold EMT-DA status as of January 1, 1992.

(4) The grievance procedure impasse item includes the time limits for the initial filing of a grievance, and extensions of time limits by the parties.

(a) The Employer proposes a normal ten calendar day time limit for the filing of written grievance, following "...the date the grievant knew, or should have known, of the event causing the grievance." It additionally proposes the addition of a provision specifying that time limits provided in Article 20 "..may be extended by mutual agreement in writing between the City and the Association."

(b) The Association proposes a normal ten calendar day time limit for the filing of written grievances, following "...the date the Union knew of, or reasonably should have known of, the event causing the grievance."

(5) The holiday benefits impasse item involves the amount of holiday pay to be received by employees, and employee utilization of this benefit in the form of paid time off.

(a) The Employer proposes no change from or amendment to the prior agreement in this area.

(b) The Association proposes the deletion of the first paragraph of Article 19, and its replacement with language providing for the following: that employees regularly scheduled to work fifty-six hours per week, would receive a holiday account of 144 hours in 1993; that employees could elect to use up to ninety-six hours of their holiday account as time off in not less than twelve hour increments, with the time off selected in the same manner as vacation periods; that employees regularly scheduled to work forty hours per week would receive the same holiday provided for under the prior agreement; and that if the agreement was executed after holidays were selected for calendar year 1993, employees would be allowed to re-pick within 30 days thereafter.

(6) Both the Employer and the Association propose the replacement of the previous contract's Article 7, entitled Insurance, but their final offers differ in the area of retiree health insurance, in the following principal respects.

(a) The Employer proposes an increase in its 1992 monthly premium payments for retiree health insurance from $58.00 for single and $148.00 for family coverage, to $149.00 for either single or family coverage, and it proposes that health insurance premiums subsequent to 1992 be determined by a formula tied to the longevity formula contained in Article 17 of the 1989-1991 agreement.

(b) The Association proposes an increase in monthly premium payment for retiree health insurance to $170 per month for either single or family coverage.

(7) The vacation scheduling impasse item involves the number of employees who may be absent for vacation or holiday purposes, during the course of each calendar year.

(a) The Employer proposes no change from or amendment to the prior agreement in this area.

(B) The Association proposes that the first two sentences of Article 10, Section 10.05 be modified to provide that "...except in an emergency, two (2) unit employees per shift may be absent for vacation purposes throughout the calendar year without consent of the Chief."

THE STATUTORY CRITERIA

Section 111.77(6) of the Wisconsin Statutes provides that the Impartial Arbitrator shall give weight to the following arbitral criteria in reaching a decision and rendering an award in these proceedings:

(a) The lawful authority of the employer.

(b) The 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 employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally:

(1) In public employment in comparable communities.

(2) In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other facts, 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.

POSITION OF THE EMPLOYER

In support of its contention that its final offer is the more appropriate of the two before the undersigned, the City of Brookfield emphasized the following principal considerations and arguments.

(1) In applying the statutory comparison criterion, that the primary external comparables should be the same as those utilized in previous arbitration proceedings between the parties.

(a) In City of Brookfield (Fire Department), Case XLII, No. 29658, MIA-676, Dec. No. 20912-A, April, 1984, Arbitrator Byron Yaffe determined in part as follows "... that all Milwaukee suburban fire departments for which there is relevant data in this record should be utilized as comparables."

(b) In City of Brookfield (Fire Department), Case 64, No. 38183, MIA-1185, Decision No. 25843-C, May, 1990, Arbitrator Jos. B. Kerkman utilized all Milwaukee suburban fire departments in deciding a dispute involving only health insurance for retirees.

(c) That the Association, in these proceedings, is attempting to alter the primary external comparison pool by urging that it be broken down into the "primary" or "core" comparables of West Allis, Wauwatosa, Waukesha and Greenfield, and the "secondary" comparables of Brown Deer, Cudahy, Franklin, Greendale, Oak Creek, St. Francis, Shorewood, South Milwaukee, Whitefish Bay and Glendale.

(d) That Wisconsin interest arbitrators have clearly recognized the principle that established primary external comparison pools should not be changed, in the absence of very compelling reasons to do so.

(e) That the Union has failed to provide the requisite very compelling reasons, to justify dividing the previously recognized primary external comparison pool into "primary" and "secondary" comparables.

(2) That the record supports the position of the Employer relative to the vacation selection impasse item.

(a) That arbitral adoption of the Union's offer in this area would create a significant overtime burden upon the City. Under the current contract, there can be forty-eight three workday vacation selections per year on which two employees could be off at the same time, or 144 days out of the 365 day work year; under the Association's proposal, that there could be an additional thirty-four three workday vacation selections for the department on which two employees could be off at the same time, which could generate additional overtime costs to the City of $10,000 per year or approximately $208.00 for each of the 48 bargaining unit employees.

(b) That the mature workforce comprising the bargaining unit, would generate too many opportunities for the workforce to be below the minimum staffing level and require overtime. In this connection, that twenty-one of the forty-eight bargaining unit members have been with the Department for more than twenty years and are thus eligible for five weeks of annual vacation per year; that this percentage of twenty year employees is almost 2½ times the average percentage of the external comparables offering fifteen vacation days per year, and is 10% higher than the nearest comparable employer.

(c) That arbitral consideration of the internal comparables supports the parties' retention of the preexisting contract language; that neither the Police Department, the Department of Public Works, the Dispatcher, nor the Library bargaining units determine vacation selection in the manner proposed by the Association in the case at hand.

(d) That Wisconsin interest arbitrators have uniformly required the proponent of change in the status quo ante, to bear the burden of persuasion. That the Association has failed to establish a compelling reason in support of its proposal, and it has also failed to advance an appropriate quid pro quo for the proposed change.

(3) That the record supports the position of the Employer with respect to the holiday benefits impasse item.

(a) That the Association is proposing a significant change in the status quo ante. Under the preexisting agreement, that employees receive 120 hours of holiday pay per year, which is paid by check on or about each December 1st, and no holiday time off is granted; the Association proposes that holiday pay be increased to 144 hours per year, that employees have the option to received ninety-six of the 144 hours in the form of time off, and that the time off be selected in the same manner as vacation periods.

(b) That the current number of paid holiday hours for firefighters is consistent with the internal comparables, when considered on the basis of the relationship between weekly hours worked and vacation allowances. That Brookfield Firefighters currently work between 40% and 45% longer work weeks than the internal comparables, and they receive 50% more holiday pay; that the Association's proposal would inappropriately provide the Firefighters with 80% more holiday pay than received by the internal comparables.

(c) That selection of the final holiday benefit offer of the Association would create a significant overtime burden upon the City. In this connection, that it would create sixty-six more days each year where two or more employees could be off on holidays, which could result in additional yearly overtime costs of $15,000 or $313.00 per bargaining unit employee, to meet minimum manning requirements.

(d) That the Association's proposal for selection of holiday time off "in the same manner as vacation periods," is unclear and ambiguous; that interest arbitrators should reject proposed changes in the status quo unless they are clear, concise, unambiguous and match the intent of the proposing party.

(e) That the Association is proposing to get twenty-four additional hours per year of paid holiday time, and the employee option to use up to ninety-six of such hours in the form of time off; that it has demanded these two new benefits without proposing any concession or quid pro quo.

(4) That the record supports the position of the Employer with respect to the personnel policy impasse item.

(a) That on October 14, 1991 the City issued a Personnel Policy and Employee Handbook for all employees, and on November 6, 1991, Chief Mehring issued a memorandum to all department members stating the handbook would "..become an addendum to the Brookfield Fire Department's Rules and Regulations," and that "Where the same subject matter is addressed in both these policies and a Collective Bargaining Agreement or State or Federal Law which may apply to you, only the Collective Bargaining Agreement or State or Federal Law will apply."

(b) That all other City of Brookfield bargaining units were able to address and to settle any questions relating to the handbook, but this was not the case with the Firefighters; that ultimately the Association was asked to "raise the matter in negotiations" if it had concerns about the handbook.

(c) That it is the Chief's unilateral right under Section 5.01 of the collective agreement, to issue the handbook as an addendum to the rules and regulations.

(d) That the Association's proposal amounts to the proposed deletion of the additions to the rules and regulations, and the proposal is unreasonable and should be rejected.

(5) That the record supports the position of the Employer relative to the date after which Mr. Schwantes no longer must retain his EMT status.

(a) That Mr. Schwantes is currently certified by the State of Wisconsin as an EMT, and is classified and used as an EMT in the Department; that the Union proposes that he no longer be required to retain his certification beyond the date of the award in these proceedings, while the Employer proposes a June 30, 1994 deadline, the date that his current certification expires.

(b) That if the Union proposed date of the decision in these proceedings were adopted, there would be a period of time when the employee was neither EMT certified nor DA certified, which would pose operational problems for the City.

(c) Realistically, that the period of time between the award in these proceedings and the June 30, 1994 expiration of Schwantes' current certification, will only be a few months.

(d) That the City's offer is more reasonable, in that it will allow the Department to utilize Mr. Schwantes as a First Responder, as well as an EMT through June 30, 1994.

(6) That the record supports the position of the Employer with respect to the acting assignments impasse item.

(a) That the parties have agreed in the renewal agreement to the use of Acting Lieutenants, but they differ relative to how long such assignment must continue before the actor is entitled to higher pay, and when the City can utilize an Acting Lieutenant.

(b) That the Employer proposed two hour working minimum, is favored by arbitral consideration of external comparisons, in that seven of the thirteen comparables have working minimums, while only six have no minimums.

(c) That the position of the Employer is supported by internal comparison with the Police bargaining unit, in that the newly created Field Training Officer assignment carries a four hour working minimum before additional pay is required.

(d) That Acting Lieutenant assignments will normally be for full twenty-four hour shifts, and the two hour proposal is intended to forestall arguments that an Acting Lieutenant is required every time that the regular Lieutenant is away from the station for short periods of time.

(e) That the City proposes the options to assign an off-duty Firefighter or Engine Operator as an Acting Lieutenant, to call in an off-duty Lieutenant to fill in, or to operate without an Acting Lieutenant, while the Association proposes that the use of "actors shall not adversely affect the practice of the City to assign an off-duty Lieutenant to fill in for an absent Lieutenant." That the City's proposal provides on-the-job training for those on the list of qualified applicants for Lieutenant, it provides for management flexibility, and it will reduce overtime costs. That the Association's proposal does not reflect the existence of any practice to assign an off-duty Lieutenant to fill in for an absent Lieutenant, it would restrict training opportunity, and it would perpetuate high overtime costs.

(f) That none of the fourteen comparable municipalities which use acting positions, require calling in an off-duty Lieutenant before assigning an Acting Lieutenant.

(7) That the record supports the position of the Employer with respect to the Grievance Procedure impasse item.

(a) That the second sentence of Section 20.02(b) of the expiring agreement provided no specific time limit for the initial filing of a grievance; that the Employer now proposes language requiring a grievance to be filed within ten calendar days of the date "the Grievant knew or should have known of the event causing the grievance," while the Union proposes the ten days to run from the date "the Union knew of, or reasonably should have known of, the event causing the grievance." That the Employer also proposes language recognizing that the time limits can be extended by mutual agreement in writing between the City and the Association.

(b) That the Union proposal is ambiguous in that it does not identify who is the "union?"

(c) That internal comparables favor the City's final offer, in that neither the DPW nor the Library agreement have specific time lines for the initiation of grievances, while the Police contract provides a ten day period after the incident

giving rise to the grievance, and the Dispatcher contract provides ten days after the event or ten days after the Grievant "secures knowledge thereof."

(d) That external comparables favor the City's final offer, in that none of the comparables specify union knowledge alone, as an exception to the initial time for filing a grievance, as is demanded by the Union in the case at hand.

(e) That the Employer proposed extension language would offer flexibility to the parties in future grievance matters, it would be mutually beneficial to both parties, it would be consistent with internal comparisons with the DPW and the Dispatcher contracts, and it would be consistent with the fact that time extensions are provided for in nine of the fifteen external comparables.

(8) That the record supports the position of the Employer with respect to the Retiree Health Insurance impasse item.

(a) That the retiree health insurance program referenced in the 1989-1991 agreement came into existence as a result of the December 28, 1988 interest arbitration decision of Arbitrator Joseph B. Kerkman.

(b) That the City's final offer in the above referenced arbitration contained the same retiree health insurance premium contribution plan that had been voluntarily negotiated with the Police Union: it provided monthly premiums of $58.00 for single and $148.00 for family coverage; and that since more Firefighters than Police Officers would have been eligible to retire within the first ten years, the Employer's actual costs were higher during the twenty year costing period.

(c) That the Union had proposed that the City pay 75% of whatever the health insurance premiums were or would be, on behalf of the retiree employees.

(d) That Arbitrator Kerkman placed great weight on the internal comparisons between the Firefighters and the Police contracts, observed that the City's final offer would maintain the consistent relationship between the two contracts, and he selected the final offer of the City.

(e) That the 1992-1994 negotiated agreement between the City and the Police, provides essentially all of the same economic revisions agreed to between the City and the Firefighters, including the three year duration, the same wage increases, the same health insurance changes, the same increases in clothing allowances, and a new Police "field training officer" position which somewhat parallels the Acting Lieutenant position being considered in these proceedings. On the whole, that the 1992-1994 settlement with the Police Union is almost identical to the City's final offer to the Firefighters, but it is the Firefighters who want more than what was agreed upon in the Police settlement.

(f) That the Association has urged treatment identical to that accorded the Police Union when it has suited their purpose to do so in the past, and vice versa. That Arbitrator Kerkman rejected the Association's attempt to break police and fire consistency in 1989, and the Arbitrator should similarly reject its attempt to do so in these proceedings.

(g) That the City's negotiated settlement with the Police and its final offer to the Firefighters, contain six important changes that are of significant benefit to employees: increased monthly premium payments; a new perpetual funding formula utilizing the old longevity pay formula; ineligibility for a retiree working for another employer, only if the retiree voluntarily participates in the other employer's health care program; spouses of retirees who die prior to becoming eligible for Medicare would receive the same payments the retiree would have received; participation in the plan can be carried with the employer when the employee accepts a non-bargaining unit position in the Fire Department; and an employee who retires after age 50 but who does not take an immediate pension, will be eligible to receive the City's health insurance contributions when he reaches normal retirement age and receives a pension.

(h) That the Firefighters' proposal to increase the City's payments toward retiree health insurance premiums is inconsistent and confusing, and it does not provide the increases in premium payments that it apparently intended to propose.

(i) That the Firefighters' attempt to increase the City's payments toward retiree health insurance premiums would, if successful, result in substantial additional costs to the City, but it is proposing no quid pro quo for the additional costs.

(9) That the City's overall offer is very competitive with settlements among the internal and external comparables and with increases in the CPI.

(a) That the average year end percentage wage increases granted Firefighters in the external comparables were below or equal to those agreed upon between the City and the Firefighters; further, the top wage rate for Brookfield Firefighters has moved upward in rankings from 11th in 1989, to 10th in 1992 and to 9th in 1993.

(b) That while eight of fifteen external comparables require employee health insurance premium contributions, Brookfield requires no such contribution.

(c) That internal comparisons favor the City's offer, since the Police Union has accepted the same wage increases, the same health insurance revisions, and the same clothing allowance increases, and various other settlements are also similar to the City's final offer in these proceedings.

(d) That consideration of the cost of living criterion favors the position of the City, in that its final offer on economic items is already above the level of increases in the Consumer Price Index.

In conclusion, that the final offer of the City should be selected for the following summarized reasons: the Union's vacation and holiday proposals would impose substantial additional costs upon the City, with absolutely no quid pro quo(s); the Union's proposal to eliminate the Department Rules and Regulations that incorporate the Brookfield Personnel Policy and Employee Handbook, is completely unreasonable and should be rejected; the Union's proposal that Mr. Schwantes be allowed to immediately resign his EMT status would create serious operational problems, and the record contains no justification for the demand; the Union's proposal that the City be required

to call in off-duty Lieutenants on overtime prior to using the new Acting Lieutenants, and its request for two hour minimum assignments, are unrealistic and unreasonable, and should be rejected; The Union's grievance procedure proposals are confusing and unique among comparables, and no appropriate basis has been advanced in support of its rejection of the City's time extension proposal; The Union's retiree health insurance proposal is inconsistent with the changes agreed upon in the Police agreement; further, the proposal is confusing and it fails to accomplish what was apparently intended. On an overall basis, that those agreements already reached by the parties provide substantial economic benefits in return for concessions in the standard health insurance program, and they closely parallel the negotiated settlements with the Police Officers and the Police Dispatchers.

In its reply brief, the Employer emphasized or reemphasized various items, principally including the following additional considerations:

(1) That the City's ability to operate with fewer firefighters than the comparables is not a meaningful consideration in the final offer selection process.

(2) That certain tax considerations referenced in the Union's brief are misleading and of no probative value in these proceedings.

(3) That comparison of shift staffing ratios is entitled to little value in these proceedings, due to lack of information relative to the types of services provided, the relative amounts of residential, commercial and industrial property in the various municipalities, and various other considerations.

(4) That the fact that Brookfield allows a relatively small shift percentage to use scheduled time off, should not be given significant weight in these proceedings; that all firefighters get their vacation time off; and that the parties have voluntarily agreed to cash payments for holidays, rather than time off.

(5) That the parties have not agreed to the Union's conclusions relating to the relative importance of the various impasse items; that the Employer particularly disagrees with any categorization of the acting assignments and/or the personnel policy impasse items as minor in importance.

(6) That the Union's vacation and holiday proposals would actually allow up to four employees to be off each day, with up to two on vacation and up to two on holiday.

(7) That the City's retiree insurance proposal is not a funding take away, but rather a substantial new funding commitment which will ensure continuous funding of the benefit beyond the terminal date of 2008 provided for under the expiring agreement; that the City has increased the funding commitment, has improved the benefit levels, and has improved the plan in various other respects; that consistency between the Police and the Fire plans was a major factor in Arbitrator Kerkman's 1991 decision; and that such internal consistency should carry great weight in these proceedings.

(8) That the rationales offered by the Union in support of its holiday benefit proposal, are flawed in various respects: that comparison of the dollar value of the holiday benefit is misleading, since it is really a wage rate comparison, which rates have been agreed upon by the parties for the duration of the three year renewal agreement; that the Union utilization of a work reduction day or a shorter workweek in comparisons of holiday benefits is invalid; that the Union's claimed need for a modest internal catch up is

not valid; that the self-serving testimony of Firefighter Union Presidents in Wauwatosa, West Allis, Greenfield and Waukesha that holiday or time off was realized by them in exchange for health insurance concessions is immaterial to Brookfield; that there is no quid pro quo for the Union urged holiday benefit improvement, in that the parties have already agreed to higher than average wage increases, and are being offered the same retiree health insurance improvements agreed upon in other settlements within the City.

That the Union recognizes that its proposal for ninety-six hours of annual holiday time off for each firefighter, could cause major problems in the maintenance of the City's minimum staffing requirements, but its simplistic proposals for reduction of minimum staffing or use of more overtime personnel are simply not viable solutions. Further that the cash out of holiday time is at straight time, while the overtime payout is at time and one-half.

Contrary to the arguments of the Union, that the record suggests that many employees would opt for holiday time off, which would generate real, rather than speculative staffing problems for the City.

(9) That the Union's holiday and vacation time off proposals are extremely costly items, which represent significant departures from the status quo, and for which it has offered no quid pro quos.

(10) That the rationales offered by the Union for its vacation proposal are not persuasive: contrary to the assertion in its brief, and as referenced above, that the Union's final offer does not provide for only two unit employees to be off on vacation or holiday, but rather for two employees to be off on vacation and two more to be off on holiday; that external ratio comparisons are meaningless, and the Brookfield status quo of two employees off for sixteen selections, is in line with the external comparables; that internal police comparisons do not support the final offer of the Union; and that the Union has provided no evidence of need, and no quid pro quo for its proposed change in this area.

(11) In connection with the Personnel Policy/Employee Handbook issue, Section 5.10 allows the Fire Chief to establish rules and regulations during the term of the contract, "except that such shall not modify or contradict any provision of this Agreement." That this provision constitutes the fulfillment of any obligation to bargain on the subject, and is a waiver of further bargaining on the subject during the term of the contract.

(12) In connection with the acting assignment issue, that the Union's position amounts to a costly attempt to force the City to utilize off duty Lieutenants, prior to making Acting Lieutenant assignments, which it has failed to justify.

(13) That the Schwantes' EMT status issue arose from the parties' 1989 agreement to resolve a disciplinary matter, and that the position of the Union would unreasonably restrict the City for the remainder of 1993 and the first half of 1994; that the City is merely proposing that Mr. Schwantes remain an EMT until his present state certification expires on June 30, 1994, and he is not being required to go to school or take any tests to maintain his status.

(14) That the Union demand for the time limits for grievances to run from the time the Union knew or should have known of the event

causing the grievance has absolutely no support in either the external or internal comparables, and it is a unique proposal which should be rejected; since the Union raised no counter argument to the Employer's proposal governing mutual extensions of time limits, that it apparently concedes the reasonableness of the proposal.

POSITION OF THE ASSOCIATION

In support of its contention that the final offer of the Association is the more appropriate of the two before the undersigned, the Association emphasized the following principal considerations and arguments:

(1) That the overall position of the Association may be summarized as follows.

(a) That the retiree insurance benefit and funding of same, the improvement of the holiday benefits, and the proposal to allow up to two shift employees to simultaneously schedule vacation or holiday time off throughout the year, are the major items in dispute in these proceedings.

(b) That the personnel policy question, the acting assignment dispute, the first responder policy, and the grievance procedure time limits questions, are of lesser relative importance.

(c) That the final offer of the Association is the more reasonable of the two based upon the statutory arbitral criteria, particularly the interindustry and the intraindustry comparisons, and upon other criteria normally taken into consideration in the resolution of interest disputes.

(d) That the Association's retiree insurance account proposal is more reasonable because, unlike the City's offer, it seeks to preserve the funding status quo and because it provides a modest "catch up" to comparable firefighters.

(e) That the City's retiree insurance account proposal, on the other hand, represents a substantial departure from the status quo, in that it would decrease its contribution for employee benefits by over $54,000 from the amount it demanded and won in the 1990 interest arbitration, it would reduce the benefits available to retirees based upon the status of the funds assets, and it is inconsistent with the current police agreement which leaves its' funding scheme untouched.

(f) That although the Union seeks a modification of the existing provisions concerning holiday and vacation scheduling, these changes represent a reasonable quid pro quo for the Union's health insurance and starting salaries concessions; further, that the Union's proposal is supported by external and internal comparisons.

(g) That the position of the Union relative to the personnel policy, the acting assignments, the Schwantes' first responder issue, and the grievance procedure issue, are supported by the comparison criteria and by other general arbitral criteria.

(2) That the record supports the position of the Association with respect to the retiree insurance account impasse item.

(a) That as established by Arbitrator Kerkman in 1990, retired firefighters are now provided with a cash annuity which they can apply to the purchase of health insurance of their own choosing, whether employee sponsored or not; that this annuity was $70.00 per month for single coverage and $148.00 per month for family coverage.

(b) That the City now proposes that funding of the retiree health insurance account be reduced by $54,265.00 through the year 2008, and that the monthly payout to each retiree be increased to $149.00, while the Union is proposing retention of the funding schedule set forth in Appendix A of the 1989-1991 collective agreement, and that the monthly payout to each retiree be increased to $170.00, or $21.00 per month more than proposed by the City.

(c) Since the City has failed to demonstrate a need for its proposed change in the status quo, or to offer a reasonable quid pro quo, that the Union's status quo proposal should be favored over that of the City.

(d) That the City proposed in the 1990 arbitration that an account system be established for the firefighters' retiree insurance account system which provided the same threshold payout as for police officers, that the firefighters' payout could increase upward depending upon the fund's condition, and that firefighters' funding was at a higher level due to the relatively greater age and seniority of firefighters versus police officers.

(e) That the City successfully eliminated the prior longevity pay benefit in 1990 to underwrite the cost of retiree health insurance, which benefit had substantially greater value to firefighters than for police officers. That it now wants it both ways, in that it would have gutted the higher longevity pay benefit for retirees, and would have paid no more than it paid the police.

(f) That the factors which led Arbitrator Kerkman to select the Employer's offer were that the Union's offer might require the payment of benefits no longer underwritten by an insurer, that the Union's proposal might provide retirees with higher benefits than provided to active employees, and that the City's offer provided the same payout to both police and firefighters; that the Union's current proposal is responsive to at least the first two of these concerns.

(g) That the fact that the Union's proposal would provide a higher payout than the police unit retirees should is no basis for its rejection, because the City's reduced funding proposal would "gut" the essence of Arbitrator Kerkman's decision. That the Arbitrator's award was based upon the understanding that there were funding differences between the police and the firefighters' accounts, he adopted the City's offer, which provided for higher funding for firefighters, and he noted that the Employer's proposal would permit the level of benefits to fluctuate from year to year based upon amounts of money in the pool. Accordingly, that neither the Arbitrator nor the parties contemplated that the retiree health insurance payout from the firefighters' account would remain perpetually linked to the police account payout, but instead contemplated that the payout would be tied to the account's ability to pay.

(h) That to now tie the firefighter account payout solely and exclusively to the payout status of the police retiree insurance account would ignore the essence of Arbitrator Kerkman's decision.

(i) That the Union's proposal to modestly increase fund payout and to maintain existing funding levels, more nearly preserves the status quo, and for this reason alone it is the more reasonable of the two offers.

(j) That the Union proposed payout increases would not increase the financial burden on the City; that while it proposes to increase the benefit paid to retirees, it does not propose to increase the amount of the City's contribution above the amount awarded by Arbitrator Kerkman in 1990, because no such increase is necessary.

(k) That when Appendix A of the City's final offer is modified to correspond with the Employer payments provided in the current contract, and when the monthly payout assumptions are adjusted to reflect $170.00 per month per retiree assuming all retire at the earliest age, a balance of $36,489.00 will remain in the year 2006; that these computations are shown in Union Exhibit #707.

(l) That internal comparisons support the final offer of the Association, in that the City's agreement with the police did not involve any funding reduction, and the City has thus failed to maintain funding consistency in its relationships with the police and the firefighters. That while the Union seeks higher pay outs for firefighter retirees, this merely reflects its attempt to preserve the status quo ante.

(m) That external comparisons support the reasonableness of the Union's proposal, in that the final offer of either party would lag behind all of the intra-industry family coverage comparisons, including West Allis, Wauwatosa, Waukesha, Greenfield, Brown Deer, Cudahy, Franklin, Greendale, Oak Creek, St. Francis, Shorewood, South Milwaukee, Whitefish Bay and Glendale.

(n) That while external comparisons for single coverage Brookfield retirees are somewhat better than for some of the comparables, the overwhelming majority of Brookfield firefighters participate in either traditional or HMO family plans.

(3) That the record supports the position of the Association with respect to the Holiday Benefits improvement impasse item.

(a) That the Union's offer involves two distinct issues, the proposed increase in the value of the holiday benefit as it stands alone, and the total time off value.

(b) That the increase in the value component of the Union's offer is favored by comparison with the "core" comparables of West Allis, Wauwatosa, Waukesha and Greenfield. That even with the selection of the Union's final offer, Brookfield Firefighters will remain behind all but Waukesha; that the Waukesha benefit level is misleading, in that its firefighters receive "work reduction days off," which are not available for Brookfield Firefighters under either party's final proposal.

(i) That the Union proposal is supported by comparisons of total time off within the "core" comparison group referenced above. Further, when compared to the larger group of comparables, Brookfield Firefighters share last place with Whitefish Bay under the Employer's proposal, and they would move just ahead of Whitefish Bay and Glendale, under the Union's proposal.

(ii) That the Union's proposal is supported by arbitral consideration of internal comparisons, in that Employees in Brookfield's police and AFSCME units receive holiday benefits equal to ten of their working days, while the fire unit receives holiday benefits equal to only five of their working days.

(iii) That the Union proposed increase in holiday benefits represents an appropriate quid pro quo for its concessions on health insurance and on firefighter starting pay; in this connection, that testimony from union presidents from the "core" comparison group, indicated that they had either received improvements in holiday time off benefits in exchange for their health insurance concessions, or that they had made no such health insurance concessions; that the practice in the comparable communities supports the reasonableness of the Union proposed exchange in these proceedings.

(c) That the Union's proposal to allow employees to utilize up to ninety-six holiday hours as paid time off is both reasonable, and is supported by the external comparables. That, with the exception of St. Francis, all firefighters working a fifty-six hour work week in comparable communities, have the option to take all or part of their holiday benefit as time off.

(d) That the Union's proposal to allow employees to utilize up to ninety-six hours as paid time off is also supported by internal comparables: that Article XVIII, Section 18.02 of the Brookfield Police Agreement allows police officers the option to utilize their holiday benefits as paid time off; that Article XIII, Section 13.01 of the Brookfield AFSCME Agreement provides for ten paid holidays as paid time off; and that only firefighters do not enjoy the option to elect to take holiday benefits as time off.

(e) That the Employer's argument that it could not meet its minimum staffing requirements if firefighters could elect holiday time off is speculative, is not supported by objective evidence, and is unpersuasive.

(i) That if problems arise the Employer could either reduce its minimum staffing or it could hire overtime personnel, which costs would be partially offset by the concurrent reduction in the City's obligation to "cash out" the holiday benefit.

(ii) That it is clear from the Union's proposed language that Employees could elect, but are not compelled to utilize their holiday benefit as paid time off.

(iii) That an examination of City Exhibit 48(a), the accuracy of which was stipulated to by the Union,

shows a substantial number of days when the Department's staffing level exceeds the minimum; that even if all firefighters took the full four days off per year, the Department could absorb the impact without meaningful interference with minimum staffing levels.

(iv) That the City can maintain its own minimum staffing levels, and to reject the Union's proposal is to force Brookfield Firefighters to pay the price for the City's decision to maintain shift size and minimum staffing at levels out of line with those in comparable communities.

(f) That the reasonableness of the Union's holiday benefit proposal is also supported by the reasonable quid pro quo provided by the agreed upon changes in health insurance, and the reduced starting wages for newly hired firefighters; that similar tradeoffs resulted from health insurance concessions negotiated with unions representing firefighters in West Allis, Waukesha, Wauwatosa and Greenfield.

(4) That the record supports the position of the Union with respect to the vacation scheduling impasse issue.

(a) That the Union's proposal for an improvement in vacation scheduling is modest, reasonable, and is supported by the external comparables.

(b) That the Union's vacation scheduling proposal is also supported by arbitral consideration of the scheduling practice for Brookfield Police Officers. That the police agreement provides that up to two officers may be on vacation or holiday at a time, with the second a tentative selection and subject to rejection on the grounds of either minimum staffing requirements or the special needs of the department; that the Union proposal would bring firefighter options into line with those of police officers, and it would provide for exceptions based upon "special circumstances."

(c) As with respect to the holiday improvement proposal, the Union submits that the requisite quid pro quo has been provided by its agreement to health insurance changes and to reductions in the starting wages of new firefighters.

(5) That the record supports the position of the Union with respect to the Personnel Policy impasse issue.

(a) That the Union's proposal is inherently reasonable, as it prevents the Employer from obtaining through arbitration that which it could not have obtained through bargaining.

(i) The Employer takes the position that Article 5 of the agreement gives it the authority to unilaterally adopt the personnel policy and handbook; the Union submits that to the extent that the provisions adopted concern mandatory items of bargaining, there is a bargaining obligation which the Employer has been unwilling to meaningfully address.

(ii) That where the Employer specifically fails to address each "bargainable issue," with attention to such implications as changes in the status quo, quid pro

quo exchange for alterations in the status quo and demonstrated need for change, it has failed to meet its arbitral burden; accordingly, that the Employer's demand for wholesale incorporation of the personnel policy into the contract is inherently unreasonable.

(iii) That the City's contention that it can unilaterally change the relationship between the parties by simply altering departmental rules and regulations, unless the rule or regulation modifies or contradicts a specific contract provision, is not credible.

(iv) That the Employer would have the provisions of Section 5.01 read as a waiver of the right to bargain over mandatory subjects of bargaining which are not specifically addressed in the agreement; that such an interpretation would undermine the Municipal Employment Relations Act, the goal of which is to encourage and compel collective bargaining between municipal employers and employees.

(v) That the evidentiary record indicates that the Employer has refused to bargain on the personnel policy and handbook during the course of their negotiations, as was requested by Union President Baird.

(b) That the position of the Union is also more reasonable, in that it responds to the distinction between the fire service and other municipal departments, it avoids setting up what might be characterized as a "parallel contract," and it proposes using the personnel policy for information purposes, to allow the City to inform employees of policy expectations and rights without giving rise to interpretive issues.

(6) That the record supports the position of the Association on the acting assignment impasse item.

(a) That arbitral consideration of three of four of Brookfield's external core comparables, supports the final offer of the Union, while the secondary comparables show no pattern and provide no meaningful guidance in the final offer selection process.

(b) That consideration of contractual overtime time provisions among Brookfield's core comparables supports the position of the Union that off-duty Lieutenants be called back prior to use of an Acting Lieutenant; that the Cities of Brookfield, Wauwatosa, Greenfield, Waukesha and West Allis have overtime distribution policies which would be undermined by the Employer's proposal that it would have no obligation to offer overtime to an off duty Lieutenant prior to creating an Acting Lieutenant.

(c) That the service time element of the Union's acting pay proposal is supported by various factors, including the fact that it provides for a direct correlation between compensation and services provided, while the Employer's proposal would provide for getting something for nothing from those whose acting periods were less than two hours in duration.

(d) That the Lieutenant call-in element of the Union's final offer seeks to preserve the status quo, which principle has been recognized by at least one Wisconsin interest arbitrator in a similar case.

(7) That the record favors the position of the Union with respect to the first responder policy impasse item, which is limited to the question of whether Firefighter Roy Schwantes should be required to maintain EMT-DA certification beyond January 1, 1992?

(a) That the arbitral authority in this matter is limited to whether it is reasonable to exempt an individual firefighter from the requirements of Article 5, Section 10 of the agreement.

(b) That language contained in a memorandum of understanding in the prior agreement, provides an absolute exemption for Mr. Schwantes, who is the subject to a pre October 1, 1990 EMT-DA status written agreement.

(c) In the case at hand, that the Employer submits that the exemption should not be applied, and that it should be allowed to deviate from the status quo, but it has failed to establish any appropriate basis for so doing.

(d) There has been no showing of any instances where there had been an inadequate level of EMT-DA staffing which would require Schwantes to continue to maintain his EMT-DA status; that the availability of a single additional EMT-DA will not allow the City to implement a first responder program; no compelling need has been shown to justify Schwantes' retention of his EMT-DA certification; and no quid pro quo has been offered to justify a change in application in the third paragraph of the memorandum of understanding.

(8) That the record supports the position of the Union on the grievance procedure impasse item.

(a) That the contract is between the Union, as the exclusive bargaining agent of those in the bargaining unit, and the City; it follows, therefore, that the running of grievance time limits should be predicated upon knowledge which is or should be possessed by the Union.

(b) That allowing time limits to run on the basis of knowledge which a grievant has or should have could result in a scenario under which an individual member of the bargaining unit could allow time limits to expire, to the detriment of the Union.

(c) That the Union's proposal does not prejudice the Employer as even the Union is subject to the time limit, if it knows or should have known of an alleged violation within the ten day time frame.

(d) That the final offer of the Union is more reasonable than that of the Employer in that it concurrently protects the interests of both parties to the agreement.

In summary that the final offer of the Union reasonably represents the settlement that the parties would have reached in negotiations had they successfully bargained a renewal agreement. On the primary issues in dispute, that the Union seeks a modest increase in retiree health insurance account payout to avoid falling further behind comparable communities, it proposes an

improvement in the holiday benefit of its members to achieve a modest catch up to its comparables, it asks to improve vacation scheduling to keep pace with comparables and to shift the burden of low minimum staffing to the Employer, and where it seeks change it has agreed to significant concessions in the areas of wages and health insurance.

In its reply brief, the Union emphasized or reemphasized various items, principally including the following additional considerations:

(1) That a key to this case is an elementary question of how many hours per year do firefighters work, and the answer is affected by at least three sorts of contract provisions addressing vacations, holidays, and work reduction. That those in the bargaining unit work more hours than almost any comparable fire fighting unit in the Milwaukee metropolitan area.

(2) That the Union's final offer represents an attempt to balance both parties' losses and gains so as to provide a package in which each realizes a quid pro quo as part of the bargain, with the City shifting larger cost sharing of health care costs to employees and gaining lower salaries during the first several years of firefighter employment, in exchange for Union improvement in salaries, a slight increase in time off and a modest increase in the retirement benefit but not in its cost.

(3) That the City would improperly attempt to convert the bargaining process into one in which it bargains an agreement within one unit and then compels all other units to conform to the same agreement, even in the face of different circumstances.

(4) That the City's argument against use of a core set of external comparables ignores various important considerations, including such factors as similarity of working conditions and department size, and it misconstrues the various arbitral precedents.

(5) With the exception of the retiree health insurance impasse item, the Union urges the Arbitrator to place greater weight on external standards, particularly its proposed core group of comparables; that it anticipates primary reliance upon internal comparisons in connection with retiree health insurance, but the Employer's offer departs from internal comparability.

(6) In connection with the vacation impasse item, that the Employer overstates the cost burden of the Union's proposal and it confuses the issue with respect to its maturity of work force arguments.

   (a) In connection with the holiday and vacation selection proposals the Employer complains that the work force is mature and that it is going to stay that way, while in connection with pension benefits it assumes that all eligible employees will retire in 1993.

   (b) That the police contract supports the vacation proposal of the Union, in that it allows a second employee on each shift to make a vacation selection, even though the tentative selection is qualified by the thirty day minimum staffing rule.

   (c) That the position of the Union is supported by the wide disparity between the time off provisions of the Brookfield Fire Department and its comparables, and by the fact that the expiring agreement makes no provision for holiday time off.

(d) That for approximately two-thirds of the year, each shift of 15 to 16 firefighters is limited to one employee off on vacation, thus allowing an employee approximately a one in sixteen chance to get time off when desired.

(e) That the above described problem is exacerbated by the lack of holiday time off, and the resulting need to use vacation time to gain a holiday off.

(7) In connection with the holiday impasse item, that fire department holiday provisions are unique to the firefighter occupation and, accordingly, that intraindustry comparisons are entitled to significant weight.

(a) That Brookfield Firefighters work 2920 hours per year, Brookfield Police work about 2034 hours, and the rest of the City's employee work about 2089 hours per year; because they work different schedules and many more hours their time off provisions are different.

(b) That the Employer's proportionality arguments have never been followed by arbitrators, and the internal comparisons are entitled to little weight in connection with holiday time off.

(c) That holiday provisions for the police are similar to those in other police departments in the area, and time off provisions for firefighters are wholly outside the range established by external comparables; that the City, however, offers no evidence and no persuasive arguments against the weight of the external comparisons.

(d) That the City has grossly overstated costs, by failing to factor in the savings to the City when an employee elects to take time off rather than pay, and by unrealistically assuming that all employees will take time off rather than pay.

(e) That the Union's proposal is quite clear with respect to picking overtime "in the same manner as vacation periods."

(8) In connection with the personnel policy impasse item, that the City failed to deal seriously with the Union's detailed objections to the proposed policy, most of its provisions are preempted by the provisions of the contract, and it simply cannot be regarded as binding on either party.

(9) In connection with Mr. Schwantes' retention of his EMT certification, that the City has simply reneged on a promise not to require him to perform EMT duties after a date certain, as referenced at page 27 of the expired agreement, and it has presented no persuasive basis for requiring him to continue performing EMT duties until June 30, 1994.

(10) In connection with the Acting Lieutenant impasse item, that the Union has carefully crafted its proposal so as not to interfere with the City's practice to call in off duty lieutenants when and only when two regularly scheduled Lieutenants were simultaneously off duty, and that the proposed two hour minimum pay threshold is supported by neither internal nor external comparisons.

(11) In connection with the grievance procedure impasse item, that the position of the Union is supported by the fact that the parties are adopting a specific time limit for filing a grievance, that

the grievance procedure requires the employee to present his grievance to the Union's grievance committee, and that this will resolve questions relating to the time of the Union's knowledge of the events giving rise to a grievance. That the City proposal regarding mutual extensions is meaningless, in that the parties can extend the time for filing a grievance or an appeal whether or not language so provides.

(12) In connection with the retiree health insurance impasse item, that the City has not offered the firefighters the same arrangement as the police, in that it maintained police funding but reduced funding for firefighters.

(a) That the "several new or increased benefits" offered by the City, pale in relationship to its failure to propose a meaningful increase in family health insurance premiums.

(b) That the language of Section 7.03(c) specifically provides that "..benefits amounts may fluctuate up or down for any particular year, depending upon the analysis of the amounts in the Account, but the benefit amount will not be lower than that listed in Appendix 'A.' "

(c) That the above language clearly negates any Employer arguments of confusion with respect to its intended meaning, and no such confusion was alleged until the filing of the Employer's post hearing brief.

(13) That the Union seeks to preserve the City's previous promise to fund a retiree pension benefit at a certain level, and it believes that under this contribution level the City may increase its benefit payout to $170.00 per month for a retiree under either a single or a family plan. In exchange, that the Union has offered concessions in the areas of changes in the health insurance benefits package and substantially reduced salaries for firefighters during their first years of service with the City.

FINDINGS AND CONCLUSIONS

This is a highly unusual interest proceeding in that there is a very comprehensive record and a significant number of impasse items, several of which clearly could have been resolved by the parties, rather than left to the interest arbitration process. This is particularly true with items such as the relationship between the Employer's personnel policies and the written agreement, the initial time limits for the filing of grievances, and the EMT work status of a single member of the bargaining unit; such impasse items normally do not lend themselves to concise evaluation under the various *specific* statutory criteria, and they often require application of the various *general* arbitral criteria arising under Section 111.76(6)(h) of the Wisconsin Statutes. Because of the nature of the case, the Arbitrator will first offer certain preliminary observations and conclusions about the nature of the interest arbitration process, after which the individual impasse items will be addressed in detail.

The Nature of the Interest Arbitration Process

As emphasized by the undersigned in many prior proceedings, an interest arbitrator operates as *an extension of the parties' contract negotiations process*, and he or she attempts to put the parties into the same position they would have reached in negotiations, but for their inability to reach a complete settlement at the bargaining table. These considerations are well described in the following excerpt from the frequently cited book by Elkouri and Elkouri:

"In a similar sense, the function of the 'interest' arbitrator is to supplement the collective bargaining process by doing the bargaining for both parties after they have failed to reach agreement through their own bargaining efforts. Possibly the responsibility of the Arbitrator is best understood when viewed in that light. This responsibility and the attitude of humility that appropriately accompanies it have been described by one arbitration board speaking through its chairman Whitley P. McCoy:

> 'Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination upon considerations of policy, fairness, and expediency, of what the contract rights ought to be. In submitting their case to arbitration, the parties have merely extended their negotiations - they have left to this Board to determine what they should in negotiations, have agreed upon. We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men, have agreed to?... To repeat, our endeavor will be to decide the issues, as upon the evidence, we think reasonable negotiators, regardless of their social or economic theories might have decided them in the give and take of bargaining...' " [1]

In applying the above described considerations, particularly in addressing significant *proposed changes in the status quo ante*, arbitrators frequently look to such considerations as the parties' past agreements, their past practices and their bargaining history, in determining which final offer most closely approximates what might have been included in a conventionally negotiated renewal agreement, and these criteria fall well within the scope of Section 111.77(6)(h) of the Wisconsin Statutes. Although such prior practices and previously negotiated agreements must occasionally give way to the need for change, the proponent of a significant change in the status quo ante, must normally establish that a legitimate problem exists which requires attention, and that the disputed proposal reasonably addresses the problem. The interest arbitrator may also require an appropriate quid pro quo, to justify the proposed elimination of or substantial change in an established policy or benefit, to the extent that such a quid pro quo would normally have been expected in the give and take of direct bargaining.[2] This burden of proof for the proponent of change may be particularly difficult to meet, in situations involving a proposed significant change in, or elimination of a *recently negotiated* status quo ante.[3]

It is also noted that while the various statutory criteria contained in Section 111.77(6) have not been prioritized in terms of their relative importance, *the comparison criteria* in general and the so-called *intraindustry comparisons* in particular, have generally been regarded as the most persuasive of the various listed criteria. This is not always the case, however,

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[1] Elkouri, Frank and Edna Asper Elkouri, How Arbitration Works, Bureau of National Affairs, Fourth Edition - 1985, pp. 104-105. (footnotes omitted)

[2] See the November 10, 1992 decision and award of the undersigned in Algoma School District, Case 18, No. 46716, Int/Arb-6278, which was cited and relied upon the Association's post-hearing brief.

[3] See the July 8, 1985 decision and award of the undersigned in Joint School District Number 1, Towns of Wheatland, Brighton, Randall and Salem, Wisconsin, Case 5, No. 33613, Med/Arb-2869, wherein one of the final offers sought to reverse the parties' adoption of a compacted salary schedule, which had been agreed upon by the parties in the immediately preceding contract renewal negotiations.

particularly where either the *bargaining history* of the parties and/or the *specific nature of an impasse item* indicate the need for principal reliance upon other arbitral criteria. Similarly, it is also noted that there is no generally accepted priority of relative importance attached to various categories or types of impasse items, and such relative importance will vary greatly from case to case, depending upon the specific impasse items and the specific final offers before a neutral. By way of hypothetical example, if the parties are significantly apart on wages, this item may be the most important impasse item; alternatively, however, only a slight difference in wage offers and/or the specific nature of parties' language differences, may render the wage component of a final offers relatively less important.

It will be further noted at this juncture that the City is quite correct that interest arbitrators generally respect the parties' bargaining history, relative to the makeup of any principal intraindustry comparison group. When the parties themselves have historically relied upon a particular group of Fire Departments for comparison purposes in their past negotiated settlements, and/or where such a primary intraindustry comparison group has been established in prior interest arbitration proceedings, subsequent arbitrators will normally utilize the same comparison group. The record in this proceeding establishes that the primary intraindustry comparison group has been defined for the parties in two relatively recent interest arbitration proceedings.

(1) Arbitrator Byron Yaffe rendered a decision and award for the parties on April 13, 1984, at which time he had been faced with the Association's argument that the most comparable fire departments should consist of those located in West Allis, Wauwatosa, South Milwaukee, Greenfield and Waukesha, and that a secondary group of comparables should include Greendale, Whitefish Bay, Oak Creek, Glendale, West Milwaukee, Shorewood, Brown Deer and Cudahy, versus the Employer's contention that the most comparable departments should be those located in West Allis, Wauwatosa and Waukesha. The Arbitrator indicated in pertinent part as follows:

> "While it is true that some fire departments in the Milwaukee suburban area are more comparable to the Brookfield fire department that others based upon size, geographic proximity, and similarities in their duties and responsibilities, the undersigned believes for the reasons discussed below that all Milwaukee suburban fire departments for which there is relevant data in this record should be utilized as comparables in this proceeding in order to obtain a relatively reliable portrait of the conditions of employment which exists among said departments for purposes of comparison with the final offers submitted herein.
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> In support of the undersigned's decision in this regard is the fact that it is undisputed in the record that the parties have previously utilized all of these Milwaukee suburban fire departments in a previous interest arbitration proceeding, and that no dispute existed regarding their comparability at that time."[4]

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[4] City of Brookfield (Fire Department), Case XLII, No. 29658, MIA-676, Decision No. 20912-A, at pages 2-3. (Association Exhibit #207)

(2) Arbitrator Joseph B. Kerkman decided an interest arbitration between the parties on May 14, 1990, at which time he utilized a primary intra-industry comparison group consisting of the City of Brookfield and fourteen other suburban communities surrounding the City of Milwaukee.[5]

Without unnecessary elaboration, the undersigned will note that no appropriate basis has been established to justify the departure from or modification of the primary intraindustry comparison group previously utilized by the parties. Accordingly, this group should continue to consist of the City of Brookfield and the fourteen other suburban communities surrounding the City of Milwaukee, which were utilized by the Arbitrators in the above referenced proceedings.

The Relative Importance of the Various Impasse Items

It seems quite clear that arbitral consideration of the seven impasse items will result in some preliminary conclusions that favor selection of the final offer of the Employer, while others favor the final offer of the Association. The preliminary analysis of the seven items, however, and the ultimate selection of the more appropriate of the two final offers cannot be simplistically based upon which offer is favored by the majority of the impasse items; to the contrary, the *relative importance* of impasse items normally varies greatly from item to item, and the final offer selection process must address and consider such relative importance.

In the above connections, the positions of the parties were essentially as follows:

(1) The Union formally urged that the *retiree health insurance*, the *holiday benefits*, and the *vacation scheduling* items were the most important of the seven impasse items, and that the remaining four items were of a lesser order of importance.

(2) While the Employer emphasized the importance of all the impasse items, its arguments suggest to the undersigned that *retiree health insurance* is the most important single item, that the *holiday benefits* and *vacation scheduling* impasse items are next in order of importance, that the *personnel policy* and the *Acting Lieutenant* dispute follow in relative importance, and that the issues relating to *Mr. Schwantes' surrender of his EMT certification* and the *grievance procedure* are lowest in terms of relative importance.

It is not necessary at this point for the undersigned to determine the exact relative importance of the various impasse items, but their relative importance as reflected in the record, will be carefully considered in the final offer selection process.

The Retiree Health Insurance Impasse Item

In this area the undersigned is faced with the varied characterizations of the parties with respect to which of the final offers constitutes a departure from the negotiated status quo, and as to the substance and the significance of the internal comparison between the retiree health insurance benefit for firefighters versus police officers.

(1) The City asks that internal comparison between the police and fire unit should be accorded primary weight in connection with this item, submits that the parties had adopted retiree health

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[5] City of Brookfield (Fire Department), Case 64, No. 38183, MIA-1185, Decision No. 25843-C. (Association Exhibit #208)

insurance uniformity at the inception of the expiring agreement, argues that its final offer would continue this uniformity, and urges the Union had failed to offer an appropriate quid pro quo, or to otherwise justify its proposed change in the status quo ante.

(2) The Union emphasizes the City's proposed reduction in funding, urges that the parties had previously provided for divergent retiree health insurance premium payment contribution levels and benefits between police and fire retirees, depending upon the adequacy of the agreed-upon funding levels, argues that the City now proposes a significant change in the status quo ante, and submits that it has failed to offer an appropriate quid pro quo, or to otherwise justify its proposed change in the status quo ante.

Both parties have presented valid and persuasive *theoretical* arguments in support of their respective positions on this impasse item, subject to arbitral determination of what constitutes the status quo ante, including whether or not the parties had previously adopted retiree medical insurance uniformity between the protective services. In making this determination, the undersigned preliminarily notes that Section 7.03(b) of the expiring agreement provides that the Employer would contribute $58.00 per month for single and $148.00 per month for family health insurance premiums for retirees for the duration of the agreement, an amount identical to its premium commitment for police retirees, and the Employer is quite correct that its final offer in these proceedings includes an increase to $149.00 per month for either single or family premium contributions, which figure is identical to its agreed-upon premium contributions for police retirees. A close examination of the record, however, rather clearly indicates that the parties had not previously agreed to either identical employer funding or to monthly premium payment uniformity in their 1989-1991 agreement, which had been consummated through arbitral adoption of the final offer of the City.

(1) Section 703(c) and Appendix A of the expiring agreement clearly and unambiguously provide for separate funding for firefighter retirees, for separate annual evaluation of the adequacy of such separate firefighter retire funding, and for separate potential upward or downward annual adjustments in monthly premium payments for firefighter retirees by the City, with a floor at the $58.00 and the $148.00 levels referenced above.[6] Accordingly, therefore, the Employer's monthly premium contribution levels for firefighter retirees were not intended to remain uniform with those for police retirees, but rather were designed to potentially

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[6] Section 703(c) of the prior agreement, a copy of which comprises City Exhibit #8, provides in pertinent part as follows:

"(c) The City agrees to fund a Fire Department Retiree Health Insurance Account in accordance with the amount listed on a document entitled 'Brookfield Fire, Post-Retirement Medical Annual Funding Cost,' with a benefit defined as '$58.00 single, $148.00 family/month.' A copy of this document is attached as Appendix 'A.'.....The parties agree that beginning in 1991, the Fire Department Retiree Health Insurance Account may be analyzed by the parties upon the request of either party, to assess whether or not the Account is capable of paying monthly benefit amounts to employees who retire in that calendar year which are higher than the $58.00 single and $148.00 family amounts listed in Appendix 'A,' provided that the same deposit amounts listed in Appendix 'A' are made. The benefit amounts may fluctuate up or down for any particular year, depending on the analysis of the amounts in the Account, but the benefit amount will not be lower than that listed in Appendix 'A.' "

fluctuate upward, based upon the adequacy of the agreed-upon and separate funding schedule for firefighter retirees.

(2) While Arbitrator Kerkman indicated in dicta his preference for benefit levels based upon comparisons between active and retired employees, he selected the final offer of the City after recognizing that the Employer's final offer would provide for fluctuations in benefit levels for firefighter retirees, based upon the amounts of money in the funding pool.[7]

In accordance with the above, it is clear that the Employer is proposing a significant change in the status quo ante in the retiree health insurance component of its final offer, which status quo had evolved through arbitral selection of the City's final offer in the parties' 1990 interest arbitration proceedings before Arbitrator Kerkman. While the Employer now proposes internal uniformity in health insurance funding and benefits for fire and police retirees, it has the burden of establishing a persuasive underlying basis for the proposed change, and it bears the risk of non-persuasion.

The Arbitrator has preliminarily concluded that consideration of the parties' *past agreement* and their *bargaining history*, including their 1990 interest arbitration, clearly favor the selection of the final offer of the Union. While theoretically logical, the Employer's emphasis upon *internal uniformity between the protective services* cannot be assigned determinative weight in the selection process in these proceedings. Accordingly, the Employer has failed to establish an appropriate underlying basis for arbitral selection of its proposed change in the status quo ante, and the retiree health insurance component of the final offer of the Union is clearly favored in these proceedings.

The Vacation Scheduling Impasse Item

In this area the Union is proposing a change in the prior agreement which would normally permit two employees per shift to be absent for vacation purposes throughout the calendar year, while the City proposes no change in vacation scheduling, which has allowed two employees to be off for sixteen vacation selections per year, with the remaining selections normally limited to one employee per shift.

In addressing this impasse area the Employer principally emphasized the burden of proof upon the Union as the proponent of change, certain practical considerations and costs purportedly arising from the proposal, and some internal comparables. The Union particularly emphasized the external intra-industry comparisons and internal comparisons, including the police department, and it alleged the existence of a sufficient quid pro quo for the requested change.

It will first be noted that the practices of the intraindustry comparables are rather clearly reflected in Employer Exhibit #47 and in Union Exhibits #404 and #405, and, without unnecessary elaboration, it is quite clear to the undersigned that the City of Brookfield is significantly more restrictive in allowing firefighter time off, including paid vacations and holidays, than are the external comparables. The Employer is quite correct that the average length of service within the bargaining unit is significantly higher than the external comparables, particularly at the twenty year plateau,

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[7] In City of Brookfield (Fire Department), Case 64, No. 38183, MIA-1185, Decision No. 25843-C, (Association Exhibit #208), at page 9, the Arbitrator indicated in part as follows:

> "...The commitment of the Employer would permit the level of benefits to fluctuate from year to year, based on the amounts of money in its funding pool."

but what of its argument that this length of service, in conjunction with the adoption of the Union's offer, would lead to too many opportunities to fall below the established minimum staffing levels? While there are both advantages and disadvantages to an employer flowing from the lengths of service of its employees, it is difficult to credit the argument that employees should be indirectly penalized by long service, from full utilization of their negotiated vacation benefits under a collective agreement, in a manner consistent with enjoyment of the benefit by intraindustry comparables. Accordingly, arbitral consideration of the intraindustry comparison criterion favors the vacation selection component of the final offer of the Union in these proceedings.

The Brookfield Police agreement provides for one vacation per shift, with a second tentative vacation pick available, subject to review no earlier than thirty days prior to the vacation, and subject to minimum staffing and special needs of the department.[8] The Union argues that its proposal would bring it into line with Brookfield Police, in that two employees could be simultaneously off on vacation, with exceptions based upon special circumstances. While the Union proposed, emergency exception to the two employees per shift limitation is not the same as that provided in the police agreement, it is correct that adoption of its final offer would put the vacation scheduling rights of the firefighters closer to the police than under the prior agreement. Accordingly, internal comparison with the police practices somewhat supports the final offer of the Union on the vacation scheduling impasse item.

While the Employer is correct in its assertion that the Union proposed vacation scheduling change may generate some additional staffing and overtime costs, this factor cannot be assigned determinative weight for two principal reasons: first, it is difficult to exactly determine such costs; and, second, such additional costs should have been taken into consideration by the Employer and the Union at the time that they agreed to past increases in the lengths of annual paid vacations for high service employees.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the record favors the vacation benefit component of the final offer of the Union in these proceedings.

The Holiday Benefits Impasse Item

In this area the parties disagree both with respect to the amount of annual holiday pay provided for those in the bargaining unit, and the ability of firefighters to utilize a portion of such holiday benefits in the form of time off.

(1) The Union proposes an additional calendar day of holiday pay, to bring this benefit to a total of 144 hours per year, and it also proposes employee elections to utilize up to ninety-six hours of such holiday pay in the form of paid time off. In support of this position it emphasizes external intraindustry comparables, internal comparison with Brookfield Police, it urges that the impact of the additional time off would not unduly burden the Employer either operationally or financially, and it submits that it has already agreed to a health insurance quid pro quo similar to that which had resulted in negotiated improvements in holiday benefits and time off in West Allis, Waukesha, and Wauwatosa.

(2) The City proposes retention of the present 120 hours per year of holiday pay for employees working fifty-six hours per week, with no provision for taking such pay in the form of paid time off. In support of this position it cites internal comparables, the

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[8] City Exhibit #50(a).

overtime impact of the additional paid time off for holidays upon the City, and the alleged inherent lack of clarity in the Union proposed procedure for the selection of the holiday time off

In addressing this impasse area, the undersigned will first note that he does not find the relationship between the Union's vacation and holiday scheduling proposals so lacking in clarity as to justify their arbitral rejection. While it is possible to find minor errors in the offers of either party, such errors should normally not significantly impact upon the final offer selection process.

The Arbitrator will next reference the earlier consideration of the vacation scheduling impasse item, wherein it was noted that Employer Exhibit #47 and Union Exhibits #404 and #405 indicate that the City is more restrictive with respect to allowing firefighter paid time off, including holidays, than are the external intraindustry comparables, which consideration clearly favors selection of the final offer of the Union on this impasse item. In addition, the Arbitrator will note, as urged by the Union, that only the firefighters, among the City's represented employees, do not have the right to take holiday benefits in the form of paid time off; accordingly, this internal comparison also favors the holiday benefit proposal of the Union.

While the Employer is undoubtedly correct that adoption of the Union's holiday benefits proposal will have an operational and a financial impact upon its operations, both the cost and the impact are difficult to evaluate and measure. As urged by the Union, the operational alternatives available to the Employer include reasonable reduction of the minimum staffing requirements,[9] and/or additional use of overtime to fill staffing needs. In these connections the Union also questions how many employees will opt for paid time off as an alternative to additional holiday pay, and it appropriately emphasizes that any overtime payments occasioned by elections for such paid holiday time off, would be at least partially offset by reduced payments by the City to "cash out" the holiday benefits.

On the basis of the above, and principally due to the intraindustry comparisons, the Impartial Arbitrator has preliminarily concluded that the record favors the holiday benefit component of the final offer of the Union in these proceedings.

The Personnel Policy Impasse Item

This impasse item arose in connection with the City's adoption of its Personnel Policy and Employee Handbook during the life of the prior agreement, and its application and ongoing relationship with the terms of the renewal labor agreement. While the interest arbitration process is not normally an appropriate forum to determine the legal significance of *the City's personnel policies handbook* in relationship to *the terms of the collective agreement*, the prospective application of these items during the term of the renewal agreement falls well within the scope of Section 111.77(6)(h) of the Wisconsin Statutes, and may appropriately be considered by the undersigned in the final offer selection process in these proceedings.

The disagreements of the parties relative to this impasse item principally relate to the right of the Union and the duty of the parties to bargain during the term of the labor agreement, versus the Employer's right to undertake certain unilateral actions during the contract term. While the Employer has certain statutory and contractually reserved prerogatives, it normally cannot unilaterally undertake actions which fall within the statutory definition of *mandatory subjects of bargaining*, unless one or more of the

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[9] Union Exhibit #408, suggests that the Employer is currently operating with a lower average ratio of shift size to minimum staffing requirements, than are the intraindustry comparables.

following conditions have been met: first, if the collective agreement clearly reserves to the Employer the right to undertake disputed action(s), it has the reserved right to do so; second, if the agreement contains a clear and specific waiver of bargaining rights on a particular mandatory item, the union has no bargaining right and the employer has no further bargaining obligation during the contract term; and, third, if there is a very clear and unambiguous bargaining history which indicates that the Union has abandoned a bargaining position in negotiations for the duration of the labor agreement, typically in exchange for other agreements by the Employer during the negotiations process, this could constitute an implied waiver of bargaining rights for the contract term. In summary then, the bargaining obligation on a mandatory bargaining item continues during the term of a labor agreement, in the absence of either *specific contract language* on the disputed point, a clear *waiver of bargaining*, and/or a very *clear abandonment of a bargaining position* in the give and take of negotiations; on the other hand, and in the absence of specific contract limitations, an employer could unilaterally adopt policies and procedures, during the life of a labor agreement, which do not significantly impact upon mandatory bargaining areas.

There are two separate elements contained in the personnel policies component of the Union's final offer: first, that the personnel policies and employee handbook would be for general information purposes only, and would not bind the Union, its members or the City; and, second, that neither the policy nor the handbook would constitute a waiver of the right to bargain by either the City or the Union.

(1) The first of the two elements is extremely broad and general, and it would limit any future application of the Employer's unilaterally established personnel policies and/or its handbook within the bargaining unit, even where the items covered did not fall within the scope of mandatory items of bargaining. The record, however, contains no persuasive justification for such an extraordinarily broad demand, and it would be extremely difficult to arrive at the intended meaning of such a provision during the term of the renewal agreement.

(2) The second of the two elements merely states the conclusion of the Union that it does not regard either the handbook or the policies as reflecting a waiver of bargaining rights by the parties. As discussed above, the statement of such a conclusion in the collective agreement is unnecessary, because the unilateral formulation of policies by either party, in the absence of agreement or ratification by the other party, would simply not constitute a waiver of bargaining on a mandatory bargaining item.

For the above described reasons, the undersigned has preliminarily concluded that the Union has failed to establish an appropriate basis for the proposed addition of its personnel policies article to the renewal labor agreement. Accordingly, the position of the Employer is favored on this impasse item.

The Acting Lieutenant Impasse Item

In this area the parties are in agreement that a provision should be introduced into the renewal agreement governing the use of and payment to bargaining unit firefighters who serve as Acting Lieutenants. They differ, however, as to the minimum amount of time necessary to qualify for acting pay, and as to when the Employer must call in an off-duty Lieutenant rather than utilize an on-duty Acting Lieutenant.

(1) The City, in support of its position, cites certain financial and practical considerations associated with the parties' agreement to utilize Acting Lieutenants, emphasizes the external intra-industry comparison criterion in support of its position, and submits that

the Union has simply failed to provide any persuasive basis for the acting assignment component of its final offer.

(2) The Union, in support of its position, urges that the primary external intraindustry comparisons on this impasse item should be between the core group of Brookfield, West Allis, Waukesha, Wauwatosa and Greenfield, argues that consideration of these external comparisons supports the selection of its final offer, and urges that the Employer is proposing change in the status quo, by retreating from a past practice of calling-in off duty Lieutenants to fill-in for absences as required.

As previously discussed above, no persuasive basis has been established by the Union for selective utilization of five "core" comparables on this impasse item, rather than consideration of the full fourteen employer intraindustry comparison group, and this full intraindustry comparison is well presented in Employer Exhibits #70 and #71. The first of these exhibits shows that seven of the fourteen comparable employers have minimum time requirements, that six have no such minimums, and two have no provision for acting pay, while the second shows that none of the comparables have any requirement to call in an off-duty Lieutenant prior to an on-duty employee being utilized on an acting basis. On balance, therefore, it is clear to the Arbitrator that the intraindustry comparison criterion clearly favors the use of acting Lieutenants, that the comparables are relatively evenly divided on the use of minimum working requirements, and that the comparisons clearly favor the use of Acting Lieutenants without the necessity of first attempting to call-in off duty Lieutenants. Accordingly, arbitral consideration of the intraindustry comparison criterion favors the selection of the acting pay component of the final offer of the City.

What next of the remaining arguments of the parties relating to certain projected costs and savings associated with the use of Acting Lieutenants, and the Union's argument relating to whether the obligation to call-in an off duty Lieutenant prior to utilizing an on duty Acting Lieutenant was consistent with or a departure from the parties' past practice? When the parties have agreed upon the principle of using Acting Lieutenants, as they have in this dispute, it must be inferred that they anticipated that the practice would have some impact upon the use of off duty Lieutenants to fill such vacancies. The adoption of a proposal that such use of acting employees be conditional upon a first refusal of overtime by off-duty personnel, coupled with no minimum time requirement as discussed above, would significantly reduce the potential use and value of any Acting Lieutenant agreement; this principle undoubtedly accounts for the fact that none of the intraindustry comparables have agreed upon a first refusal practice such as that proposed by the Union in the case at hand.

On the above bases, the Impartial Arbitrator has preliminarily concluded that the record clearly supports the acting pay component of the final offer of the City in these proceedings.

The Schwantes' EMT Certification and the Grievance Procedure Impasse Items

These items, as discussed above, are clearly of a lesser order of importance than the remaining items, and they cannot be assigned significant weight in the final offer selection process.

(1) While the parties have debated the relative merits of requiring Mr. Schwantes to continue to maintain his EMT certification until the effective date of this decision and award, versus requiring it to be maintained until its June, 1994 expiration date, no persuasive reason has been advanced as to why the matter should not be governed by item (3) of the memorandum of agreement which

appears at page 27 of the expiring labor agreement, which provides as follows:

> "Section 5.10 will not apply to any employee who as of October 1, 1990, is subject to an individual written agreement regarding that employees' maintenance of an EMT or EMT-DA license."

In consideration of the bargaining history of the parties and the terms of the expiring agreement, the Arbitrator has preliminarily concluded that the record supports the component of the final offer of the Union which provides that Mr. Schwantes shall not be required to hold EMT-DA status as of January 1, 1992, which portion of the final offer will actually become effective with the publication of the decision and award in these proceedings. This determination is, however, entitled to little independent weight in the final offer selection process.

(2) While the Employer is technically correct that there is no significant support among the external or internal comparables for initial grievance time limits running from Union as opposed to employee knowledge of the event causing the grievance, and this supports arbitral selection of its proposed modification to the second sentence of Section 20.02(b), this is a very minor consideration. Further, the Union is quite correct that the Employer proposal for a new Section 20.02(f), to provide for written time extensions between the parties, adds nothing of substance to the agreement.

In consideration of the record, the Arbitrator has preliminarily concluded that it slightly favors the final offer of the Employer on the grievance time limits impasse item, but this consideration is entitled to little independent weight in the final offer selection process.

Summary of Principal Preliminary Conclusions

As addressed in more significant detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions:

(1) A Wisconsin interest arbitrator operates as an extension of the parties' contract negotiations, and he or she will normally attempt to arrive at the same settlement that the parties would have reached over the bargaining table, had they been able to do so; in carrying out this function, an arbitrator may properly examine and consider such factors as the parties' past agreements, their past practices, and their bargaining history.

(2) The proponent of significant change in the status quo ante, is normally required to demonstrate that *a significant and unanticipated problem exists*, and that *the proposed change reasonably addresses the problem;* an appropriate *quid pro quo* may also be required to justify the proposed elimination of, or substantial change in an established, existing and defined policy or benefit.

(3) While the Wisconsin Legislature has not seen fit to prioritize the various statutory criteria contained in Section 111.77(6), the *comparison criteria* in general and the so-called *intraindustry comparisons* in particular, have generally been regarded as the most persuasive of the various listed criteria; this is not always the case, however, particularly where the *bargaining history* of the parties and/or the *specific nature of an impasse item* indicate the need for principal reliance upon other arbitral

criteria. The relative importance of *various categories of impasse items* may also vary significantly on case-to-case bases.

(4) The primary intraindustry comparison group in these proceedings should continue to consist of the City of Brookfield and the fourteen other suburban communities surrounding the City of Milwaukee which were utilized in prior interest arbitration proceedings.

(5) The relative importance of the seven impasse items, as reflected in the record in these proceedings, will be carefully considered by the Arbitrator in the final offer selection process.

(6) The Employer has failed to establish a persuasive basis for its proposed change in the status quo ante contained in the retiree health insurance component of its final offer, and arbitral consideration of the parties' past agreement and their bargaining history, including their 1990 interest arbitration, clearly favors the final offer of the Union in this area. Accordingly, the record favors the final offer of the Union in this area.

(8) The record favors the vacation benefit component of the final offer of the Union in these proceedings.

(9) The record favors the holiday benefit component of the final offer of the Union in these proceedings.

(10) The Union has failed to establish a persuasive basis for the proposed addition of its personnel policies article to the renewal labor agreement. Accordingly, the record favors the final offer of the Employer on this impasse item.

(11) The record favors the acting pay component of the final offer of the City in these proceedings.

(12) The record favors the final offer of the Association relative to the EMT-DA status of Mr. Schwantes, but this item is entitled to little independent weight in the final offer selection process.

(13) The record favors the final offer of the Employer relative to the grievant time limits impasse item, but this item is entitled to little independent weight in the final offer selection process.

The Final Offer Selection Process

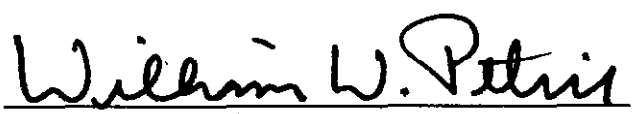
After a careful review of the entire record, including consideration of all of the various statutory criteria, the Impartial Arbitrator has preliminarily concluded that the final offer of the Union is the more appropriate of the two final offers. This conclusion is principally based upon the fact that the application of the various statutory arbitral criteria favors the retiree health insurance, the vacation benefits, and the holiday benefit components of the final offer of the Union, and despite the fact that the final offer of the Employer was more appropriate in connection with certain other impasse items.

AWARD

Based upon a careful consideration of all of the evidence and argument, and a review of all of the various arbitral criteria described in Section 111.77(6) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Brookfield Professional Firefighters Association, Local 2051, is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the Association's final offer, hereby incorporated by reference into this award, is ordered implemented by the parties.



WILLIAM W. PETRIE
Impartial Arbitrator

November 19, 1993