MAR 1 0 1997

BEFORE THE ARBITRATOR

In the Matter of the Petition of

CITY OF MANITOWOC FIREFIGHTERS, IAFF,
LOCAL 368, AFL-CIO

For Final and Binding Arbitration
Involving Non-Supervisory Firefighter
Personnel in the Employ of

Case 112
No. 52494 MIA-1983
Decision No. 28785-A

CITY OF MANITOWOC

Appearances:

Shneidman, Myers, Dowling, Blumenfield, Ehlke, Hawks & Domer, Attorneys at Law, by Timothy E. Hawks, appearing on behalf of the Union.

Patrick L. Willis, City Attorney, appearing on behalf of the Employer.

INTEREST ARBITRATION AWARD

City of Manitowoc Firefighters, IAFF, Local 368, AFL-CIO, (herein "Union") having filed a petition to initiate interest arbitration pursuant to Section 111.77, Wis. Stats., with the Wisconsin Employment Relations Commission (herein "WERC"), with respect to an impasse between it and City of Manitowoc (herein "Union"); and the WERC having appointed the Undersigned as arbitrator to hear and decide a dispute with respect to the parties calendar 1995-1997 collective bargaining agreement by order dated July 25, 1996; and the Undersigned having held a hearing in Manitowoc, Wisconsin, on October 10, 1996; and the parties having each filed post-hearing briefs, the last of which was received December 24, 1997.

ISSUES

The parties' final offers constitute the statement of the issues.[1] The following is my summary of the issues in dispute.

1. WAGES: Both parties proposed to increase base salaries by 3.5% effective January 1, 1995. The Employer proposes to increase base

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[1]The parties stipulated to the correction of a clerical error in the Union's final offer which misplaced the decimal point in the percentages used to calculate EMT and paramedic pay.

wages by 3% effective January 1, 1996, while the Union proposes to do so by 3.5%. The Employer proposes that the minimum base wage increase effective January 1, 1997, provided in the existing cost-of-living provision be adjusted to 3.5% with a maximum of 6%. The Union proposes that the minimum base wage increase effective January 1, 1997, provided in the existing cost-of-living provision be adjusted to 4.0% with a maximum of 7%.

2. PARAMEDIC AND EMT PAY: The Employer would propose to increase paramedic pay currently at $71.25 per month to $73.75 in 1995, $75.96 in 1996, and $78.61 in 1997. The Union would propose no change in either Paramedic or EMT pay for 1995 and 1996. It would propose that for 1997, "All EMT's with defibrillator training receive .0059 of fire fighter - E." "All EMT-I's with defibrillator training .00764 of fire fighter - E." It proposes that paramedics receive .0247 of fire fighter - E.

3. VACATION AND SCHEDULE TRADES: The parties have agreed to amend the language of Article X, Section 3, but disagree as to the number of bargaining unit members who may be off on vacation at one time. The current provision provides that up to four members may be off at one time with a fifth off in the discretion of the Fire Chief. The Employer proposes to change that to three and four respectively:

> (c) **Vacation and Holiday Selection Limits**. In selecting vacation and holidays, no more than three (3) members of the bargaining unit shall be permitted to select off days per shift at any time, except that a fourth (4th) member may be permitted off at the discretion of the Fire Chief. No combination of three (3) officers of the bargaining unit may be off on the same day, except at the discretion of the Fire Chief. No paramedic or combination of paramedics shall select time of which would result in less than two paramedics scheduled to work on any shift, provided, however, that if only two paramedics are assigned to a shift, one paramedic shall be permitted to select time off on any particular day, subject to other restrictions herein.

The Employer proposes to add the following provision to Article X, Section 3, which would incorporate the existing shift trading policy into the agreement:

> In addition to the selection of vacation and holiday time off as provided for herein, firefighters shall be permitted to trade work time in accordance with Policy No. F-0012 formulated on December 4, 1990."

The Union proposes to revise Article X, Section 3 (c) as follows:

> (c) **Vacation and Holiday Selection Limits**. Effective January

1, 1997, when selecting vacation and holidays, no more than three (3) members of the bargaining unit shall be permitted to select off days per shift at any time except during the months of June, July and August, on Christmas Eve and Christmas Day but a fourth (4th) member may be permitted off at the discretion of the Fire Chief. During the months of June, July and August, on Christmas Eve and Christmas Day, no more than four (4) members of the bargaining unit shall be permitted to select off days per shift at any time, except that a fifth (5th) member may be permitted off at the discretion of the Fire Chief.

The remainder of Article X, Section 3 (c) will remain as agreed to.

It also proposes to create a provision entitled Article X, Section 3 (d) Trades of Work Time based on Policy No. F-0012 formulated December 4, 1990, but also providing:

Trades of work time may be done between individuals with certain limitations to insure that the orderly function of the department is not disturbed.

1. Trades must be approved by the Battalion Chief, or in his absence, the Deputy Chief.

2. In general, no trade shall be made with a person who is more than a single rank below you. Exceptions to this shall be allowed with the approval of the Chief or Deputy Chief if the seniority on the unit is not disrupted to the point where a member is forced to assume acting officer responsibilities.

3. The EMS qualifications of the person you trade with must be at least equal to yours, unless sufficient personnel with the necessary EMS qualifications are assigned to the unit.

4. Any schedule adjustments due to trades of work time between individuals must be agreed to by all individuals affected by said trade.

POSITIONS OF THE PARTIES

The Union submits that the core of this dispute is the vacation selection issue and the 1997 salary increase. It is the Union's position that the Employer proposal takes too much, too soon and too fast. The Employer fails to provide any quid pro quo for the Employer's proposal to restrict the use of vacations. By contrast, the Union's proposal is a reasonable compromise. It is the Union's view that the vacation issue outweighs all of the other issues.

For the 1996, the Union heavily relies upon comparisons to

other similar bargaining units in northern Wisconsin. The average increase is 3.38%. The Union's proposal would still leave the bargaining unit at lower than the average wage for 1996. Although the Employer's proposal is comparable to the internal settlements, the Union argues that the external comparisons are entitled to more weight. Based upon these factors the Union asserts that its offer is preferable.

The Union notes that its proposal changes the way that EMT and Paramedic rates are calculated, but that the rates it actually produces are slightly lower than those proposed by the Employer. The purpose of this proposal is to simplify the negotiating process and to avoid the slippage which tends to occur if the rates are merely expressed in dollar amounts. Accordingly the rates have been set at the lower amount as a partial quid pro quo for the advantage the Union gains in protecting those rates from slippage. It argues that this issue ought to be of less importance in the outcome of this matter. The Union asserts that the difference over the "trades" policy is largely editorial and, therefore, is little weight in this proceeding.

The Union argues that Under Sec. 111.77(6), Stats., that the appropriate group for comparison under Sec. 111.77(6)(d), the external comparison criterion, is comparable full-time fire units throughout northeastern Wisconsin. It notes that fire fighters are unique and that, therefore, there are no reliable comparisons in other employee groups. Further, there are very few local full-time fire departments. Thus, comparisons in the immediate vicinity are not practical. It proposes to use Green Bay, DePere, Appleton, Oshkosh, Fond du Lac, Neenah, Menasha, Kaukana Sheboygan and Two Rivers. This is the same group which Arbitrator Bellman used in an award dealing essentially with benefit issues between the parties in 1979. There has been no award since that time between these parties. It relies upon analogies to the arbitration awards written by Arbitrators Haferbecker, Kerkman and Kessler, between the Employer and its police unit, for the principles supporting its selection. Thus, it relies upon the fact that Arbitrator Haferbecker relied to some extent on Green Bay, Appleton, Neenah and Menasha as comparisons in the police unit even though he did distinguish them on the basis of their size or proximity to a larger city. By contrast, it is impractical to do as Arbitrator Kessler did, use only close by units, because there are too few full-time fire units in close proximity. It relies upon the reasoning of Arbitrator Haferbecker for the proposition that the comparable group should be based upon units which compete in the same labor market for firefighter employees. Based on that reasoning, it argues that its comparison group is appropriate because the communities in northeastern Wisconsin are the communities which constitute the labor market for firefighters. By contrast, Wausau which is urged by the Employer as a comparable, is too far away to compete in that market.

The Union asserts that its proposed vacation concession/quid pro quo, is more appropriate than that of the Employer's. The Union notes that the current practice has been in effect for over twenty years. The Union's proposal is a compromise protecting the employees' right to select vacations at the most desirable times, summers. It has provided carefully documented evidence that the essential cause of the Employer's need to curtail call-ins is the fact that the Employer has reduced the staffing of the entire department in recent years. The Employer, could unilaterally reduce the minimum daily staffing levels to reduce overtime. It notes that the savings which the Employer receives by operating at the lower staffing levels "dwarfs" the amounts involved in this case. By contrast, the Employer's proposal reduces the number of people off for vacation, for the entire year without offering anything in exchange for this concession.

The Union argues that its final offer with respect to wages for 1996, is more closely aligned with the percentage increases that other fire fighter unions voluntarily negotiated with their employers. The annual salary of firefighters here remains well below that of other firefighters in the comparability group. Even when the fact that employees here work fewer hours annually than most other comparable fire units, hourly salaries are still below average. Neither offer will change that ranking. The Union views the level of productivity, measured by number employees in relation to the population served as very important. Manitowoc firefighters provide the most service when compared to the comparables. Accordingly, it views its offer as more reasonable.

Finally, it argues that its EMT is more reasonable than the Employer's. Its EMT proposal is supported by the comparables which mostly use the percentage system. The Union's proposal clarifies what are appropriately duties of EMT's in order to avoid later disputes. The Employer's proposal is defective on that basis because it does not.

The Employer first addresses the issue of the appropriate set of comparables. The Employer uses a structured set of comparables. It uses as primary comparisons two nearby cities with full-time fire departments, Sheboygan and Two Rivers. The Employer does not object to the use of Kaukana. It is near the Fox River Valley cities and its smaller population size somewhat offsets the larger populations of Appleton and Oshkosh. The Employer strongly objects to the use of Green Bay and DePere. Green Bay is substantially larger. DePere is a wealthy suburb of Green Bay and arbitration awards show that its wages are set by using Green Bay as its primary external comparable. The Employer also urges that the award by Arbitrator Bellman involving the parties not be used as precedent in that the Employer was not adequately represented in that case, the case itself involved only a benefit issues, the award itself does not reflect that the issue of comparables was given serious attention, and there is no evidence the parties have

used that set of comparables in any mutual way since. The Employer does urge that Wausau be used as a secondary comparable even though it is somewhat distant from Manitowoc because it has a population roughly equivalent to Manitowoc, the average income in the area is roughly equivalent to that in this area and residential values are comparable. It notes wages in many pay categories in many units are similar between Wausau, Manitowoc, Two Rivers and Sheboygan. The Wausau firefighters recently used Manitowoc as a comparison in their arbitration proceeding. Finally, the Employer argues that Sheboygan and Two Rivers should be treated as the primary comparables because they are geographically close. Further, their size differences tend to cancel size out as a factor. More important, however, is that the hourly pay of many categories of employees outside this unit fall very close to comparable wages in each of these communities. It notes that in most Fox Valley arbitration awards, Manitowoc is not listed as a comparable at all.

Next the Employer argues that the primary issue is the wage increase in each year. The Employer argues that the wage increase is strongly supported by the pattern of internal settlements. The Employer notes that Manitowoc has a long history of internal comparability. There have been only a few variations. The significant variation involved the police supervisors and police patrolmen when they were the only two units to have a three year contract from 1993-5. Other minor variations have been justified over the years by facts not present at all in this case. Indeed, unlike those situations, firefighters pay here is relatively high among the expanded comparison group, while police hourly pay is second from the bottom.

The Employer argues that external wage comparisons strongly support its wage offer. The Employer urges that its method of wage and total compensation comparison is more accurate and useful. Using the more accurate total compensation approach in Employer exhibit 2-13, Manitowoc's total hourly compensation of $14.66 is far above the average of $13.94. Again, firefighters on an hourly basis are paid near the top of the Employer's extended comparison group while police, police lieutenants and top heavy equipment operators are paid near the bottom of the group. In any event, the Union exhibits demonstrate that the cumulative percentage wage increases being proposed by the Employer is closer to the prevailing pattern claimed by the Union than the Union's own request. It notes that unit employees work fewer hours per year than any of the comparable fire units. The Union's offer for a higher than average pay increase without a comparable increase in hours makes the Union's proposal entirely unreasonable.

Turning to the vacation selection issue, the Employer notes that it has offered to formalize the current work day trade policy in the agreement as part of its offer on vacations. It notes that the Union's offer slightly changes that policy. The Employer argues that it has established that there is a substantial problem

which requires a change in the current practice. The Union's proposal is at least a tacit acknowledgement that a problem exists. The problem is that the Employer can no longer be guaranteed to provide adequate staffing if four people are off on vacation at the same time. Since 1980, the bargaining unit membership has declined from 51 unit members (17 per shift) to 39 unit members (13 members) per shift. If the battalion chief is off for training or a firefighter is sick, the Employer cannot meet its minimum staffing requirement. Moreover, as noted, the Union publicly criticized the Employer's administration for inadequate staffing. The Employer concedes that there are other methods for addressing the problem, but hiring more firefighters, or asking firefighters to work more hours is not necessary. The Employer's proposal essentially merely adjusts the number off on vacation to the same relative number as were off before the staffing reductions took place (about 24%). Thus, under the Employer's proposal an employee would have about the same chance as he or she would have had to have a specific schedule as they did in 1980. By comparison to the expanded group, the current benefit enjoyed by employees is the best of all comparable fire departments. The Employer's proposal would still leave the unit in a generous position versus comparable position. The Union's proposal offers no relief in June, July and August, when the problem is most acute. The Employer acknowledges that it has not included a quid pro quo in its offer, but argues that the relinquishment it is requesting is not that significant.

In reference to the EMT issue, the Employer concedes there is a clerical error in the Union proposal and that the same should treated as corrected. The Employer argues that its proposal is more reasonable in that paramedics and EMT's should not have to wait for a pay increase. EMT pay here is more competitive than paramedic pay is. It notes that while other comparable cities which have EMT's generally use them to staff the rescue squad, Manitowoc does not. Virtually all of the rescue squad pay goes to the paramedics. The vast majority of the Department's service calls are emergency medical calls. If the paramedics are the primary employees who are responding to these emergency medical calls, they are the ones who deserve an increase in their compensation. In this situation, the Union is permitting EMT's to "tag along" with the paramedics even though EMT's do not use their skills here to the same extent they do in comparable cities.

The Union replies that the pivotal issue in this case is whether or not the Employer is required to show a quid pro quo for the vacation issue. The Employer's argument goes fatally wrong by ignoring the 1.75% cost its offer will have on firefighters. In the real world no union or employer would ignore the costs that large. That the Employer would do so in its written submission to the arbitrator reveals the extent to which it has lost perspective at the table and why this impasse has occurred. The Union believes that this issue is so important no other issue need be addressed in this case. In its view the concession sought by the Employer is a

classic example of the circumstance requiring a quid pro quo. In any event, the Employer has not shown a clear and convincing case for the need for a change. The Employer has not shown that it cannot run the fire department safely: it has always been able to call-in firefighters to meet its minimum manning requirements. The Union's offer is reasonable when it is properly adjusted by the amount of the overtime savings reasonably projected. Finally, it notes that arbitrators routinely refuse to change comparability pools established by prior arbitrators: the arbitrator should rely upon the comparability pool of Arbitrator Bellman.

The Employer indicates that the parties are in serious disagreement over the prioritization of the issues in dispute. It does not see why the half percent difference in wages in one year is different in either year. Essentially, the Union seeks to break the historical pattern by one-half percent in 1996 and 1997. It understands that the Union is relying, in part, on its interpretation of Arbitrator Kessler's treatment of the comparables in his award between the Employer and its police union. In the Employer's view, the awards which underlie Arbitrator Kessler's award offers no support for the Union's contention that Green Bay, DePere, Appleton, Oshkosh, Neenah and Menasha should receive consideration as external comparables. The adoption of Arbitrator Kessler's rationale would make Two Rivers, Sheboygan and Fond du Lac primary comparables. In any event, in any of these comparable groups, unit employees are well paid. Turning to the vacation issue, it asserts that the impact of the Employer's proposed vacation selection can be viewed from two perspectives, the adverse impact on the Union and the beneficial impact on the Employer. There is really no evidence in the record to suggest that there will be any measurable adverse impact on members of the bargaining unit. While it is true that only three instead of four unit members can select vacation, the liberal shift trading policy will still be in effect. Therefore, employees are still likely to be able to be off on any day they choose. This is why the Employer has proposed incorporating the trades into the agreement rather than leaving it as unilateral policy. In its view, this is an adequate quid pro quo. The Union mistakenly claims that the "City's goal is straightforward--it intends to reduce overtime costs by limiting the freedom with which firefighters may elect their vacation periods." The Employer stated at the hearing that the Fire Chief proposed the addition of 3 new fire positions. That has occurred. Accordingly, the three positions will eliminate the overtime now performed by unit employees on call-back. Any argument by the Union that it should share in potential overtime savings has evaporated. This is a fact which the arbitrator should consider because the Union had advocated it and had been aware that it had been proposed as of the hearing herein. Saving overtime is not the Employer's "only goal." The addition of 3 new firefighters will go a long way in addressing the staffing concerns which have been the subject of public Union criticism the Employer's elected officials. The Union's proposal to limit vacation selection other than in

June, July and August and the Christmas holidays does little to address the staffing issue. Most of the staffing problems have occurred with vacation selections in those months. Finally, the Employer asserts that its wage offer is most appropriate when using either external or internal comparables. It argues the Union appears to be conceding the fact that the internal comparisons are heavily in the Employer's favor. The fact is that the historical pattern has been one of internal consistency. Manitowoc firefighters are well paid when compared to the primary comparables of Two Rivers, Sheboygan and, using Arbitrator Kessler's comparison group, Fond du Lac. Firefighters are relatively better paid than other units in the city and, therefore, they are the last group which should break with the internal pattern.

DISCUSSION

Under Section 111.77, Stats., the arbitrator is required to select the final offer of one party or the other, without modification. The arbitrator is to make the selection of the preferable offer by comparing the offers of the parties on the basis of the criteria specified in Section 111.77(6), Stats., which are as follows:

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages hours, and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally:

   1. In public employment in comparable communities.

   2. In private employment in comparable communities.

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

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

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

h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration, or otherwise between parties, in the public service or in private employment.

The arbitrator uses his or her judgment to determine the importance of any one issue and the weight to be assigned to any specific criterion. The purpose of forbidding the arbitrator from modifying a final offer is to limit the impact of arbitration on the voluntary resolution of disputes, by forcing the parties themselves to make their offers appear the most reasonable. Unfortunately that does not always happen. When that does not occur, the arbitrator is then confronted with a situation in which he or she must select the least unreasonable offer. In this case, the parties have acknowledged there are really two major issues, the wage increase and the vacation scheduling issue. The other issues are important, but do not affect the outcome herein. Accordingly, they will not be addressed separately. In this case, the Employer has included in its final offer package its proposal to restrict the right of employees to use already agreed-upon vacation time with wage increases it believes are very likely to be accepted. Very understandably, the former proposal is one which tends to be very disagreeable to unit employees. By contrast, the Union has taken advantage of the fact that the Employer has included this undesirable vacation provision to attempt to get a wage increase it is unlikely it would have gotten otherwise. Accordingly, the determinative issue is which of the two offers is the least undesirable.

One of the factors ordinarily considered by arbitrators (See, Sec. 111.77(6)(h)), is the parties' past collective bargaining agreements and the bargaining history which has led to them. Public employers are increasingly faced with budgetary pressures under which they have to accomplish the same or increased responsibilities with little or no increase in funds. In order to accomplish this both sides in collective bargaining must find ways to work together to improve productivity and develop innovative solutions to these problems. One of the reasons taking into account the parties' bargaining history is important is to insure that the arbitration process supports that process.

There are two important facts in the parties' history which are central to this dispute. First, over the years the parties have mutually established a work schedule/wage structure which has some unique features. The annual hours worked by a firefighter here are among the lowest, if not the lowest, of any fire department either party views as comparable. This is largely a result of compensatory days and holidays. Both parties continue to recognize that time off is an important element of the entire

structure of this agreement. That factor is given heavy weight in this decision. For example, time off is a recognized quid pro quo for wages. Therefore, comparisons to annual wage rates in otherwise comparable fire departments must be given less weight here.

Second, manning and productivity were the subject of a prior cooperative effort of the parties. Starting in 1980, there has been a decline in manning in this department. In 1980, there were 51 employees in the bargaining unit. By 1989, there were 38. Since 1989, the number has remained steady and is now 39. Manning has been an issue between these parties since 1980. Newspaper articles submitted by the parties indicate that in negotiations leading to the 1989, collective bargaining agreement the parties cooperated in an innovative effort to increase the efficiency of the department. One of the agreements of the parties is incorporated in Article V, Section 4.[2] It essentially provides that unit employees will voluntarily wear pagers in order to be called back to work, provided the Employer maintains a minimum manning of ten firefighters, including supervisory personnel. The Employer also made capital equipment improvements.

It is also important to note that during the bargaining leading to this agreement, the subject of the adequacy of the current manning became a subject of controversy between the Mayor and Union leaders which was debated in the local published press starting in late December, 1994. The petition to initiate arbitration was filed April 14, 1995. Final offers were exchanged and this matter was certified for arbitration on June 27, 1996.

WAGE ISSUE

a. Internal Comparisons

There are seven collective bargaining units in the city

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[2]Article V, Section 4, now provides: "The employer may implement a pager recall system in order to summon firefighters to emergency calls in accordance with department policy and operating procedures. The Employer shall consult with the Union prior to promulgating such policies and procedures. Any participation by Union members in a pager recall system shall be on a voluntary basis.

In the event the Employer fails to maintain a regular crew of ten on duty personnel, the Union shall have the right to unilaterally remove this section from the Labor Agreement by written notice to the Employer. In determining the "regular crew," all firefighters on duty, including supervisory personnel shall be included, provided, however that clerical personnel shall not be included."

(including the fire supervisory unit and the police supervisory unit). There are 37 non-represented employees. The largest unit is the city hall unit consisting of 119 members. This unit has 39 members. The recent history of collective bargaining settlements indicates that all units have ordinarily settled for the same general wage increase. There have been variations. The Employer has granted some units an additional increase as part of a health insurance deductible reimbursement buy out. Police supervisors received needed catch-up adjustments in 1989 and 1991. The Union does not assert that it is entitled to a catch-up increase in this situation. There was a variation for the DPW in 1992-4; however, the resulting increase had the same economic impact as that agreed upon by the other units. There has been one significant variation in the 1995 wage increase. The police and police supervisors each had an agreement which ran from 1993-1995. When that agreement was settled those units received a 4% general increase for 1995. The Employer contends that settlement trends went down before other units bargainined for the 1995 contract year and this is why other units have settled for 3.5% for 1995. Accordingly, the other units, including this unit, which bargained in 1995, are entitled to 3.5%. The City Hall unit has settled for 3.5% in 1995, 3.0% plus a $.16 per hour insurance buy out in 1996, and 3.5% floor in the cost of living formula for 1997. The DPW and waste water units have settled for the same amounts except they do not have a health insurance buy out adjustment. The police, police supervisors and fire supervisors have not settled for 1996-7. The Employer has been consistent with its non-represented employees. In short, there has been a generally consistent pattern of internal settlements with variations for buy-outs and changes in economic conditions.

b. External Comparisons

I do not agree with the position of the Union that Arbitrator Bellman established the comparison group in his 1979 award. The issue in that case was a benefit issue and neither party seriously litigated the issue of comparability group. Arbitrator Bellman's award does not indicate that the issue was litigted then.

The Employer correctly proposed the use of the concept of a primary and secondary comparable group. I would agree that Two Rivers and Sheboygan constitute the primary comparable group for the Manitowoc fire unit. They had wage increases as follows:

	1995	1996	1997
Sheboygan	3%	4%	4%
Two Rivers	3%	3%	3%
average	3%	3.5%	3.5%
Manitowoc (Er.)	3.5%	3.0%	3.5%
(Un.)	3.5%	3.5%	4%

Sheboygan and Two Rivers are in close proximity to Manitowoc and they share the same economic circumstances.

Sheboygan and Two Rivers are not the same size as Manitowoc. Further, a primary comparison group of only two other units is subject to significant skewing. Accordingly, it is appropriate to use a secondary comparison group. It is not necessary to address the specific composition of the secondary comparable group because there isn't a significant variance in the annual wage increases even using the Union's comparison group. As noted, the Union heavily relies upon its external comparisons to support its position that its general wage increase proposal is appropriate. It is important to note that while it argues that annual wage rates here are low when compared to its chosen group, it wisely has not argued that a catch up increase is appropriate. As noted above, the parties here have consistently reached voluntary settlements by establishing a unique local pattern which emphasizes time off. This unit works fewer hours than any of the comparables. Thus, it is not appropriate to engage in a comparison of wage rates.

The 1995 average in the primary comparison group shows that the parties have agreed upon a wage increase greater than the average of the primary comparison group. The 1996 average heavily favors the Union, while the 1997 average heavily favors the Employer. The parties have a long history of settlements based on internal comparability. Certainly, these units share a strong identity of economic circumstances. Further, use of internal patterns fosters stability and local resolution of disputes. Very importantly, the Union is simply picking the year where the external settlements favor its position and ignoring the fact that on the whole over the three years, the Employer's offer is consistent with the external pattern. The cost of living is also a factor. It has been lower than the Employer's offer in each year. Accordingly, I would give greater weight to the internal pattern.

VACATION ISSUE

The party proposing to change existing contract language must show either that it has made an offer of an equivalent exchange (quid pro quo) or that the circumstances relating to that provision have changed since its adoption, that there is now a need to make a change and that its proposal is reasonably suited to making the needed change.

For reasons discussed below, the Employer has not offered an equivalent quid pro quo. The Employer has failed to show that there has been a change in circumstances relating to this provision. The current vacation policy is about twenty years old. It appeared in the 1980 labor agreement in virtually the same form as in the current agreement. While the four person allowance has been the same, the number of bargaining unit positions declined.

The application of the provision to the declining staff produced an ever increasing percentage of employees on a shift who could be off. While this is a change in circumstance, the important fact is that the staffing levels have been essentially the same since the 1989 mutual agreement on staffing levels. In negotiations for the predecessor 1986-89, agreement the Employer had unsuccessfully sought to vest in the discretion of the Fire Chief the number of people allowed off on vacation at one time. During negotiations for the 1989 agreement, the Employer unsuccessfully sought changes in this provision. It isn't clear whether or not the Employer tried to include non-unit supervisors in the four person maximum. The four person maximum is deeply related to the minimum manning/pager provision of Article V, Section 4. I note the Employer again unsuccessfully sought a 3 person minimum in negotiations leading to the current agreement. Thus, circumstances have not materially changed relating to the vacation provision since 1989.

The next consideration is whether the Employer has offered an adequate quid pro quo for its proposal. The parties have hotly debated what is equivalent value for the Employer's proposal.[3] The Employer's argument that there is no appreciable value to the employee for this change, irrespective of the admitted significant economic value this change would have for the Employer, is without merit. First, the enjoyment of the vacations the parties have already agreed upon is a benefit which is at the core of employee interests in their employment. While insuring that an employee may have a specific day off does help alleviate the loss of the ability to schedule a vacation, it falls short of the advantage of choosing, and having guaranteed off, a large block of time for vacation purposes. The fact that it is difficult and ambiguous to calculate the value for individual employees does not mean that it is without value. The bargaining history of these parties demonstrates that time off concerns of this unit have always been important. Second, the argument of the Employer ignores the value of the overtime opportunities which these employees have by virtue of this provision. In the ordinary situation unnecessary overtime is a problem which employers have a right to attempt to remedy, but when overtime opportunities have been used as an incentive to gain other concessions from employees, the employees are entitled to a quid pro quo for the elimination of those opportunities. A review of the parties history culminating in the addition of the minimum manning/pager provision to the agreement makes it highly probable that the overtime opportunities involved represented one of the continuing incentives for the productivity gains the Employer obtained from the unit. Third, the better view is that the Employer should share the benefits it receives by making changes to

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[3]The true test of value in quid pro quo bargaining is when both parties would agree that the proposed exchange is equivalent irrespective of whether the exchange is made or undone.

obtain productivity gains. This is most particularly true where the issue is the balance of productivity versus time off. Indeed, the Employer's next alternative to using overtime is hiring at least one, and probably three firefighters. The cost of this dwarfs the cost of the overtime involved. In some sense that might be a better statement of the Employer's economic benefit from this change. For the above reasons, the Employer has failed to offer a equivalent quid pro quo.

Next, it is important to determine the value of the quid pro quo offered by the Union for the additional half percent increase it seeks. The Union demonstrated this by actual overtime caused by having four people off on vacation in the years 1993, 1994, 1995. Had its proposal been in effect, it would have saved the Employer .68%, .81% and 1.06% of base salary in the respective years. June, July, and August are the peak periods for vacation selection. The Employer's proposal which would have been effective during the full year would have saved it an additional 1.40%, 1.59% and 1.97%. While the Employer is correct that it could choose not to use this provision or could hire staff, the value of having the choice to use this provision at its discretion to have a greater level of staffing is a substantial portion of the above figures.[4] The Union's offer on the vacation issue is, therefore, more appropriate.

Summary and Selection of Final Offer

Factor h. stresses that arbitrators should look to the totality of an offer rather than merely one component. It is that factor which makes the decision in this case close. The Employer's offer for wages for 1996 is preferable, but the negative effect of the Employer's offer with respect to the vacation issue essentially undermines a large part of its offer.

Taking into account the quid pro quo offered by the Union for 1997, the total offer for the Union in that year is more appropriate. Taking into account the total impact, it is my conclusion that the Union's offer is the least unreasonable.

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[4] The parties stipulated that the Employer will hire three additional firefighters. If the Employer does do so, it has argued that it will not need to use this provision and, thus, there will be no cost impact. However, the Employer may choose to use this provision to increase staff above the current minimum 10 any time it chooses to do so. This important flexibility has substantial value to the Employer. If the Employer chooses to give up that option and return to a four person minimum, it too would be entitled to the same quid pro quo, a half percent less than the comparable general increase.

Accordingly, the Union's offer is adopted.

AWARD

That the parties agreement incorporate the final offer of the Union.

Dated at Milwaukee, Wisconsin, this 6th day of March, 1997.

Stanley H. Michelstetter II
Arbitrator