BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
LOCAL UNION NO. 257 INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS (IAFF) AFL-CIO	Case 358 No. 50156 MA-8165
and	
CITY OF APPLETON	

Appearances:
Mr. Michael Dobish, State Representative, International Association of Fire Fighters, P.O. Box 3365, Oshkosh, Wisconsin 54903, for the Union.
Mr. James P. Walsh, Assistant City Attorney. 200 North Appleton Street, Appleton, Wis

ARBITRATION AWARD

Local Union No. 257 International Association of Fire Fighters (IAFF) AFL-CIO (the Union) and City of Appleton (the City), are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant to the parties' request for the appointment of an arbitrator, the Wisconsin Employment Relations Commission, on January 20, 1994, appointed Jane B. Buffett, a member of its staff, to hear and decide a dispute regarding the interpretation and application of the agreement. Hearing was held in Appleton, Wisconsin on February 23, 1994. No transcript was taken. Briefing was held in abeyance pending the parties' attempt to resolve the matter in the Municipal Interest Arbitration preceding then pending. After such attempts proved unsuccessful, the parties filed briefs, the last of which was received May 23, 1994.

ISSUE

The parties stipulated to the following statement of the issue:

> Did the City violate the terms of the Collective Bargaining Agreement when it failed to pay time and one-half in addition to regular rates for assigned duties on Saturdays and double time in addition to regular rates for assigned duties on Sundays?
>
> If so, what is the appropriate remedy? 1/

1/ The parties stipulated to the number of hours' pay that will be affected by this arbitration award.

BACKGROUND

After the parties became deadlocked in their negotiations for the 1992-1993 collective bargaining agreement, their respective final offers were certified by the Wisconsin Employment Relations Commission to Interest Arbitrator Marvin Hill, Jr. On June 8, 1993, Arbitrator Hill issued an award adopting the Union's final offer. The offer contained, among other things, the following provision which became Article 4 - Section G:

ARTICLE 4 - Hours of Work

. . .

G. The duty day for the purpose of training procedures and other regular, routine duties shall commence at 0700 and terminate at 1130, recommence at 1300 and terminate at 1630. Maintenance and servicing of vehicles, equipment, and other fire department property after 1630 shall be limited to items necessary for efficient response to alarms. The balance of the tour of duty shall be to provide service in matters of responding to emergency and non-emergency calls.

The employer shall at its option adopt one of the two following alternatives:

1. The routine duty schedule for Saturday shall be from 0700 until 1200. Sundays and holidays, as designated in Article 10, shall be limited to the past customary practice of those duties necessary for efficient responses to alarms, housework, and vehicle checks.

2. In the event that the employer chooses to assign routine duties, then it shall pay employees four hours at time and one half on Saturdays, for any Saturday in which routine duties are assigned.

If on Sundays or holidays the employer shall pay double time for eight hours.

Upon receipt of the award, the City made retroactive payments to affected employes. The Union disputed the City's interpretation of Article 4 - Section G which applied to employes who had performed routine duties outside the duty day on Saturdays and Sundays. On September 7, 1993, a grievance was filed over the dispute. The grievance remained unresolved and is the subject of this arbitration award.

POSITIONS OF THE PARTIES

The Union

The Union argues that the language of the contract clearly and unambiguously requires that the City pay employes four hours at time and one-half on Saturdays and eight hours at double time on Sundays in addition to regular pay when routine duties are assigned outside the duty day. The Union also points to the testimony at hearing that during negotiation it stated its intention as to the effect of the disputed provision. As evidence that the City understood the Union's interpretation of its proposal, the Union points to the City's brief before Arbitrator Hill which set forth the provision's intent. Similarly, the Union points to the portion of Arbitrator Hill's award that also sets forth the Union's intent. Finally, the Union sees the City's position as an erroneous interpretation of the provision as an overtime provision instead of special task pay.

The City

The City argues that the contract language provides that pay at the rate of time and one-half for duties assigned outside the duty day on Saturdays and the double time in Sundays is not in addition to regular pay. It finds this language clear and unambiguous, and, consistent with case law, must be interpreted as written. In the alternative, if the language is found to be ambiguous, it should be interpreted against the drafting party, here, the Union. There is no indication in the Union's brief before the Interest Arbitrator or in the Interest Arbitration Award itself that indicates that the time and one-half and double time was understood to be in addition to the straight time already paid. The City argues that the Union's concern was to prevent the assignment of duties outside the normal workday hours and that the compensation for such duties was secondary.

DISCUSSION

The undersigned rejects both parties' arguments that the language of Article 4 - Section G is clear on its face. The two parties make defensible arguments for interpretations which are diametrically opposed to each other, and the undersigned is satisfied that the provision is ambiguous. That is, it could reasonably be read to mean that the time and one-half and double time pay was intended to be in addition to regular pay, as argued by the Union, or that it was intended to be as total compensation, as argued by the City.

The City cites the principle frequently applied in the interpretation of contracts that ambiguous provisions should be interpreted against the drafting party. To be sure, that is an important arbitral principle in contract disputes in which a party remains silent during bargaining as to the intent of its ambiguous proposal and thereafter argues that it gained a contractual right to which the opposite party did not knowingly assent.

Such is not the case here. In this bargain, the Union, notwithstanding the lack of precision of its provision, did not mislead the City, but rather did make the intent of its proposal clear. That intent was stated in the first place by the parties' discussions during negotiations. Union President Michael Springer and Union Vice President Ronald Hockett testified without contradiction that during negotiations, City Director of Personnel David Bill asked if the Union's proposal would require the City to make the stated payments in addition to the regular pay. Both Union officers replied, "Yes."

This finding that the City understood the Union's intent is corroborated by the City's argument in its brief to Arbitrator Hill. In its April 5, 1993 brief, the City argued, at page 24:

> The Union asks for 4 hours at time and one-half (6

> hours pay) for any amount of routine work performed on Saturdays and 8 hours at double time (16 hours pay) for any amount of routine work performed on Sundays and holidays. This is in addition to the pay the employees are already receiving for working those days. (Emphasis added)

It is logical to infer that the effect of the Union's proposal as stated by the City was so significant that if the City had misstated it in its brief, the Union would have disavowed it in its April 28, 1993 reply brief. In fact, the Union did not make any reference to the method of calculating pay for those employes who work outside the duty day on Saturdays and Sundays.

In his award, Arbitrator Hill referred to the City's understanding of the Union final offer on page three in the summary of the argument of the parties, at which point he recited the portion of the City brief cited above. In the discussion portion of his award, he did not refer to the calculation of compensation. That omission is consistent with his view that the Union's primary objective was to prevent assignment of duties outside of the normal duty day hours. It appears that for Arbitrator Hill, the detailing of the compensation system was not significant and its absence from his discussion is not dispositive here.

Having found that the Union's verbal communication of the effect of the provision, the City's confirmation of its understanding of that effect as stated in the City's brief, and the Interest Arbitrator's recitation of the City's understanding are all consistent with the Union's position in this dispute, the undersigned concludes the correct interpretation of the provision calls for compensation for work outside the duty day to be in addition to the regular pay which the affected employes receive.

This conclusion is reached notwithstanding the City's argument that the Union's purpose in making this proposal was to limit the assignment of routine duties to the duty day. That purpose is not in conflict with a position that such duties, when they are assigned, are compensated at the stated pay in addition to the regular pay. Moreover, it is logical that the Union crafted the proposed compensation plan, which the City describes in its brief before Arbitrator Hill as "onerous" (page 16) in order to create a disincentive for the City to make such assignments. In any event, the Union's goal of restricting duties outside the duty day does not undercut the conclusion that the City and the Interest Arbitrator understood the Union's intent in proposing the portion of the final offer that became Article 4 - Section G.

In light of the record and the above discussion, this arbitrator issues the following

AWARD

1. The City violated the terms of the Collective Bargaining Agreement when it failed to pay time and one-half in addition to regular rates for assigned duties on Saturdays and double time in addition to regular rates for assigned duties on Sundays.

2. The City shall make all affected employes whole for all losses incurred as a result of its violation.

Dated at Madison, Wisconsin this 22nd day of July, 1994.

By Jane B. Buffett /s/
Jane B. Buffett, Arbitrator