

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**FIRE FIGHTERS LOCAL 1072,
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS**

and

MILWAUKEE COUNTY

Case 523

No. 61484

MA-11954

Appearances:

Mr. Timothy R. Schoewe, Deputy Corporation Counsel, Milwaukee County, Milwaukee County Courthouse, Room 303, 901 North Ninth Street, Milwaukee, Wisconsin 53233, appearing on behalf of Milwaukee County.

Mr. Joe Conway, Jr., President, Fire Fighters Local 311, IAFF, 821 Williamson Street, Madison, Wisconsin 53703, appearing on behalf of the International Association of Fire Fighters.

ARBITRATION AWARD

The County of Milwaukee (hereinafter County) and Milwaukee County Fire Fighters Association, International Association of Fire Fighters, Local 1072 (hereinafter Association) are parties to a collective bargaining agreement that was in effect at all times relevant to this proceeding which provides for final and binding arbitration of certain disputes. A request to initiate grievance arbitration was filed with the Wisconsin Employment Relations Commission on August 6, 2002. Commissioner Paul A. Hahn was appointed to act as Arbitrator on August 13, 2002. Hearing took place on October 9, 2002, in the City of Milwaukee, Wisconsin at the Milwaukee County Courthouse. The hearing was not transcribed. The parties were given the opportunity to file post hearing briefs. Post hearing briefs were received by the Arbitrator on November 19, 2002 (County) and November 20, 2002 (Association). The parties were given the opportunity to file reply briefs. The Association filed a reply brief on December 5, 2002. The County did not file a reply brief. The record was closed on December 9, 2002.

ISSUE

Association

Did the Employer violate the Collective Bargaining Agreement when it failed to complete and implement the Reclassification/Reallocation study as directed in Section 5.04 of the Collective Bargaining Agreement? If so, what is the remedy?

County

Is the grievance arbitrable?

Does the Arbitrator have jurisdiction to render the requested relief?

Did Milwaukee County violate Section 5.04 of the collective bargaining agreement?

Arbitrator

Did the County of Milwaukee violate section 5.04 of the collective bargaining agreement? If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

4.01 GRIEVANCE PROCEDURE

(1) APPLICATION: EXCEPTIONS The grievance procedure shall not be used to change existing wage schedules, hours of work, working conditions, fringe benefits and position classifications established by ordinances and rules which are matters processed under other existing procedures. Only matters involving the interpretation, application, or enforcement of the terms of this Agreement shall constitute a grievance.

. . .

4.02 ARBITRATION PROCEDURE

. . .

(3) Arbitration may be initiated by the Union serving upon the county a notice, in writing, of its intent to proceed to arbitration. The notice shall identify the specific contract provision upon which it relies, the grievance, the department, and the employes involved.

. . .

(9) The Arbitrator shall neither add to, detract from, nor modify the language of this Agreement in arriving at a determination of any issue presented that is proper for arbitration within the limitations expressed herein. The arbitrator shall have no authority to grant wage increases or wage decreases.

. . .

5.04 RECLASSIFICATION / REALLOCATION STUDY COMMITTEE

The parties agree to create a reclassification / reallocation study committee no later than February 1, 2001 for the expressed purpose to evaluate the total compensation level of Firefighters / Equipment Operators and Fire Captains. Said study shall be completed in time for adoption in the Airport's 2002 Budget.

Each party shall select four members to serve on said committee. The Director of Human Resources and the Director of the Airport shall select a consultant to assist this committee.

This study shall not result in the reduction of any existing employee's salary. The cost of the study shall be born by the Airport and the Department of Human Resources for Milwaukee County. Neither party shall initiate any litigation of any type as a result of this study.

STATEMENT OF THE CASE

This grievance involves the County of Milwaukee, Wisconsin and Milwaukee County Fire Fighters Association International Association of Fire Fighters, Local 1072. (Jt. 1) The Association alleges that the County violated the collective bargaining agreement by failing to abide by the terms of Section 5.04 of the agreement by refusing to implement a wage scale

agreed to by the representatives of the County and Association. The County, arguing procedural and substantive arbitrability, takes the position that it did not violate Section 5.04 of the collective bargaining agreement because there was no mutual agreement reached by the parties as to any wage adjustment to be adopted and implemented by the County.

The grievance was filed on January 2, 2002 by Union President Wisniewski. (Jt. 2) The grievance was settled by holding it in abeyance until further meetings of the Reallocation/Reclassification study committee. The settlement was confirmed by letter to Mr. Wisniewski from Al Eldridge of the County's labor relations department on April 25, 2002. (Jt. 2) The parties failed to reach agreement on a wage adjustment to be submitted to the Airport Director to be adopted in the airport budget in June of 2002. The Union then notified Eldridge on July 18, 2002, that it would file for arbitration with the Wisconsin Employment Relations Commission. (U. 1) The grievance was submitted for arbitration to the Wisconsin Employment Relations Commission on August 6, 2002. (Jt. 2)

The Milwaukee County Fire Department consists of fifteen firefighter/equipment operators, three Captains, one Assistant Fire Chief and one Fire Chief. Their primary responsibility is to provide emergency response to the Milwaukee County Airport with regard to aircraft fires and emergencies, structural fires, hazardous material incidents and emergency medical responses. They respond from one fire station, staffing three "Crash Vehicles" and an assortment of other support vehicles. The firefighter/equipment operators and Captains belong to the bargaining unit, while the Fire Chief and the Assistant Chief do not. The eighteen members of the bargaining unit are evenly split into three shifts with a Captain in charge of each shift. The members work a reoccurring shift consisting of one twenty-four hour shift on-duty, followed by two twenty-four hour shifts off-duty. There are four bargaining unit personnel on duty each and every day of the year.

Milwaukee County employs all members of the Fire Department which falls under the Division of Airport Operations, which is under the Milwaukee County Department of Public Works. The Airport Operation falls within the overall Milwaukee County budget, but is unique from other operations in that it does not impose a tax levy upon the residents of Milwaukee County. The revenue to operate the airport is generated through airline landing fees along with other incidental revenues such as parking and usage fees.

In October of 2000, the parties concluded negotiations for a 2001 agreement and for the 2002-2004 collective bargaining agreement. As part of that contract settlement, the parties created Section 5.04. The parties agreed to create a reclassification/reallocation study committee by February 1, 2001 for the express purpose to evaluate the total compensation level of fire fighters/equipment operators and fire captains. Said study was to be completed in time for adoption in the airport's 2002 budget. Each party was to select four members to serve

on the committee. The Director of Human Resources and the Director of the Airport were to consult a consultant to assist this committee. Any cost of the study was to be born by the airport and the Department of Human Resources for Milwaukee County. (Jt. 1)

Although the agreement was ratified by the members of the Association's bargaining unit prior to December 31, 2000, the agreement was not signed by representatives of the parties until February 26, 2001. (Jt. 1) The Association during the Spring of 2001 made several attempts to get the County to name members to the Study Committee and to schedule meetings of the Study Committee. (U. 1) On March 13, 2001, the Association filed a grievance to get the Committee established. (U. 2) This grievance was resolved during an April 11, 2001 meeting when the parties scheduled a Committee meeting, and the Union dropped the grievance. (testimony of Wisniewski) By a letter from the Association's attorney on December 11, 2001, the Association again demanded that the County participate in a meeting of the study Committee. (U. 1)

On January 2, 2002, the Association filed the grievance in this matter against the County for failure to meet or comply with section 5.04 of the collective bargaining agreement. (Jt. 2) On April 23, 2002, the parties agreed to a settlement of the aforementioned grievance which was confirmed in a letter to Wisniewski from Eldridge dated April 25, 2002, and executed by Mr. Wisniewski on behalf of Local 1072 on May 6, 2002. The grievance was to be held in abeyance pending further efforts of the study committee.

At a meeting on April 25, 2002, the Association presented the result of a study that it had done itself of similar situated fire departments at airports across the Country. (Assn. 7) On June 3, 2002, Eldridge submitted a draft report of the Reclassification/Reallocation Study Committee to the Association. (Assn. 9) On June 19, 2002, the Human Resources Department submitted a report to the Airport Director of the results of the study committee attaching a wage proposal from the County H.R. Department and a wage proposal from the Association for consideration by the Airport Director for inclusion in the airport's 2002 budget. (Jt. 3) (The document is dated July 19, 2002, but I believe the record establishes that the correct date was 6-19-02).

The Association notified the Human Resources department of the County on July 9, 2002, in writing, that it disagreed with the aforementioned report submitted to the Airport Director and petitioned for arbitration, notifying, by copy of the letter, Eldridge of the Labor Relations Department. (Assn. 1)

At the arbitration hearing on October 9, 2002, the County raised procedural and substantive arbitrable issues. The County submitted that procedurally the County had not been given proper notice of the appeal to arbitration; substantively, the County raised the issue that the arbitrator pursuant to the arbitration clause of the collective bargaining agreement did not have jurisdiction to modify the wage schedule in the collective bargaining agreement.

POSITIONS OF THE PARTIES

Association

The Association argues that the grievance is substantively arbitrable because the Association's claim is not to ask the Arbitrator to change existing wage schedules in the collective bargaining agreement but to enforce section 5.04 which was agreed to by the County and requires the Airport Director to adopt the recommendation of the study committee. Procedurally, the Association argues that the County had ample notice that the grievance was held in abeyance until a May 10, 2002, meeting and completion of the study committee's responsibilities which were to be concluded by June 30, 2002. The Association notes that the County was given written notice of its intention to proceed to arbitration to Jertha Ramos-Colon of Human Resources and Al Eldridge, appropriate County representatives.

The Association argues that the report submitted by Jertha Ramos-Colon to the Airport Director stated that it was to be considered by the Airport Director which is in violation of Section 5.04 where the language clearly states that the Study Committee's recommendation was to be "adopted" not just considered. The Association argues that the study committee as a whole agreed to submit the fire fighters wage proposal; the committee did not agree to submit the Department of Human Resources wage proposal. The Association argues that the submission of the Department of Human Resources proposed wage modification for the fire fighters was done unilaterally. The Association argues that only the fire fighter's wage proposal was agreed to be submitted, and therefore, the inclusion of the Department of Human Resources wage proposal was not consistent with Section 5.04; the Fire Fighters wage schedule was the only schedule that should have been in the report.

The Association submits that only the Association provided compensation data from the agreed upon comparable airport fire fighting departments and no one from the County disputed the figures in the report submitted by the Association.

In its reply brief, the Association, responding to a County argument regarding the budgetary process, posits that only its witness, Wisniewski, testified as to the budgetary process and there was nothing to refute Wisniewski's testimony that the Airport has its own budget and that this budget is incorporated into the County budget with no impact to the County tax levy. The Association argues that the budgetary requirements of Sections 59.60 and 63.11 of the Wisconsin State Statutes place no bar on the County granting the Association wage increases. The Association submits that the County Board and the County Executive, in their approval of the collective bargaining agreement containing the language of section 5.04, have already approved any wage increases resulting from implementation of the Study Committee's recommendation for wage modifications for the fire fighters.

The Association reiterates that the Association's study and data collection went unchallenged. The Association points out that the experts of the Human Resource Department failed to conduct their own study and were unable to collect the same data that Association President Wisniewski was able to obtain on his own initiative. The Association takes the position, in response to another argument by the County, that it did not delay the establishment of the Committee and that it made numerous attempts to get the Committee under way in early 2001. The Association again argues that Section 4.01(1) does not prevent the Arbitrator from considering the Association's grievance and granting a remedy to implement the Committee report that the Union argues was agreed to by the members of the study committee. The Association argues that the report developed by the Committee was to be submitted to the Airport Director for adoption and it was inappropriate and in violation of Section 5.04 for the County to unilaterally submit its own recommended wage scale to the Airport Director.

In conclusion, the Association submits that the County failed to follow the unambiguous language of Section 5.04. The Association asks that the grievance be sustained and as a remedy, the Association's wage schedule should be implemented and the fire fighters made whole.

County

The County takes the position that Section 4.02(9) does not allow the Arbitrator to grant wage increases or decreases and therefore the grievance is not substantively arbitrable. The County submits that the Association's argument that the County did not incorporate the study into the Airport budget is misguided because the Airport budget is not separate from the Milwaukee County budget and the Association's witness's unsubstantiated opinion does not override Sections 59.60 and 63.11 of the Wisconsin Statutes. Under that law, the budget can only be adopted by the County Board of Supervisors in conjunction with the County Executive. The County submits that it is clear that wage rates require specific County Board and County Executive action to be implemented.

The County takes the position that Wisniewski's study on behalf of the Association was not authorized by the Committee, and the Study Committee never reached a decision to advance to the Airport Director the study completed by the Association. The County argues that the record simply does not support any assertion that the Study Committee adopted the Association's study or report of comparable airport fire fighting departments. The County avers to the Arbitrator that the study to be submitted to the Airport Director for inclusion in the 2002 budget was to be a product of negotiation and that it is baseless in fact that the Association proposal was a compromise agreed to by the Committee. Testimony of the County's witness, the County submits, demonstrates the lack of any recommendation from the study committee that the Association position was to be adopted. The County argues that Association President Wisniewski acknowledged in his testimony that the work of the

Committee was not completed and that he admitted that no consensus had been reached by the Committee on any proposal, recommendation or study to be submitted to the Airport Director regarding prospective wage amendments to the fire fighter's wage schedule.

The County submits that the testimony of its witness noted that there was no Committee consensus and no Committee recommendation and that the Study Committee merely agreed to submit the Association proposal for consideration, not adoption, and that it was the specific understanding that both the Association proposal and the Department of Human Resources proposal would be submitted for consideration. Neither party, the County argues, agreed that either proposal would be the adopted position of the reallocation/reclassification study committee.

The County takes the position that the issue before the Arbitrator ought not to be that the County failed somehow to implement the study. The County submits there was no finality to the process and there was no recommendation to adopt. The process under Section 5.04 required mutuality of the parties which was absent. The County did not breach the contract because it could not act unilaterally to confer a benefit to represented employees under a collective bargaining agreement.

In conclusion, the County takes the position that there was no study for the County to implement, and it is clear from the testimony of witnesses for both parties that the Study Committee did not reach a consensus and never really finished its work. The County submits that the Arbitrator has no recourse but to deny the grievance.

DISCUSSION

This is a contract interpretation case. The Association alleges that the County violated section 5.04 of the parties' collective bargaining agreement when it refused to adopt and implement a report of a study committee initiated by said section to adjust wages of bargaining unit members. Initially I need to address the County's two arguments that the grievance in this matter is not arbitrable because the arbitrator does not have jurisdiction to adjust wages and because the County was not given proper notice of the Association's decision to proceed to arbitration. Following the County's opening statement at the hearing, during which it raised these arguments, I stated that I had no authority to decide substantive issues unless the parties gave me that right. At that point, the parties, by their representatives, stipulated that I could decide all arbitrable issues. I recognize that the arbitration clause of the Agreement states that I cannot grant wage increases, but I find that I can address the issue of whether the County violated section 5.04 of the Agreement without violating that provision of the contract. Therefore, the grievance is substantively arbitrable. Procedurally, the agreement requires that notice of arbitration be given by the Association to the County. (Jt. 1, section 4.02) I find that

the Association met that requirement when the Association President notified Eldridge of the County Labor Department in writing on July 18, 2002 of the intent to arbitrate. (Assn. 1) The Petition to the WERC also put the County on notice. (Jt. 2) Therefore, I find the grievance procedurally arbitrable.

The events leading up to this issue and arbitration had what could best be described as a tortured history. It is evident from the record that the Association had to work very hard to achieve formulation of the study committee required by section 5.04 and had to work equally hard through the filing of two grievances to get County representatives to meet. The first grievance was settled in April of 2001, resulting in committee formulation and meetings. The second grievance, which is before me, was held in abeyance pending the outcome of resumed meetings of the Committee, even that took four months from the filing of the grievance in January of 2002. (Jt. 2)

On the day the grievance was settled by holding it in abeyance, the Association presented the committee with the results of the Association's survey of airport fire departments from a list of agreed to departments. This meeting took place on April 25, 2002. (Jt. 2 & Assn. 7) The parties in committee met again on May 10, 2002. The hearing testimony supports a conclusion that there were significant differences as to what the Association thought it should receive in adjusted wages and what the County thought it could afford. (Testimony of Wisniewski and Eldridge)

The Association takes the position that at the May 10 meeting it offered a compromise which the committee agreed would be submitted to the Airport Director for adoption in the 2002 airport budget. The County submits there was no agreement, although it did not dispute the results of the Association's study or the numbers generated from the results of that study. The County submits that the record establishes that the compromise offered by the Association, which is part of Assn. 9, was to be submitted to the Director only for consideration as the County could not agree to it but agreed to submit it.

On June 3, 2002, the County submitted a draft of the report it was going to submit to the Airport Director. Attached to the Draft was the proposal of the Association and the proposal of the County Human Resources Department; the Association did not agree with the Draft. (Assn. 9 & 10) On June 19th the County unilaterally submitted a report to the Airport Director for his consideration; attached were the respective proposals. (Jt. 3) The Association, in a strongly worded letter to the Human Resources Department, which authored the report to the Airport Director, disagreed with the unilateral action of Human Resources, the report itself and demanded another meeting of the Study Committee, the absence of which led to the notice of intent to arbitrate. (Assn. 1) I note here that no evidence was introduced as to what the Airport Director did with the report he received from Human Resources with the attached proposals.

The essence of this matter is section 5.04 and whether there was any agreed to report submitted to the Airport Director for inclusion in the 2002 airport budget. It is clear that if the Study Committee reached an agreement on wage adjustments, and there was no issue that these employees needed an upward adjustment, that the Airport Director by contract had to adopt the recommended agreement into the airport budget that he submitted to the County Board. Just as clearly, however, section 5.04 does not mandate that the parties have to reach agreement and contains no language that spells out what was to happen if the parties did not reach agreement. Nor does either party argue that if no agreement was reached, an arbitrator was to look at respective proposals and pick one or fashion a wage adjustment. The Association's position is that it believed that at the conclusion of the May 10th meeting there was agreement and the language in the report submitted to the Airport Director should have told him to "adopt" the Association's compromise proposal and not just "consider" it.

I initially find that there is nothing in writing in the record that evidences an agreement on what to submit to the Airport Director. No document was introduced bearing recommended wage adjustments signed by representatives of the County and Association. Further, there was no evidence introduced to clarify the intent of Section 5.04. Winiewski testified that the study committee was set up to bridge a significant gap between the parties' wage proposals during the 2000 negotiations. Therefore, I can only look to the specific language of 5.04 to divine its intent.

I find that based on the testimony of Winiewski for the Association and Eldridge for the County no agreement was reached by the study committee on a wage adjustment to be adopted into the Airport's 2002 budget.

Winiewski testified on direct and cross-examination as follows:

Union pushed Assn. 7 -- County said can't go to County Board with these numbers; County offered a compromise -- I said can't get this by members; Union made a compromise and committee said it would present and support; I was against report (Jt. 3) submitted to Airport Director; I don't believe study concluded; I could compromise on Assn. 7; verbally signed off, wasn't in writing at conclusion of meeting on May 10th, did not happen; Union expects to meet in the future to conclude study; there was no final report to the Airport Director; language of study committee did not guarantee a result.

Eldridge testified on direct and cross-examination as follows:

Disagreement -- both sides had different views on different issues; committee didn't take any official action; committee never adopted any report to forward to Airport Director; each side developed a proposal and that is what Human Resources submitted to the Airport Director; there was no compromise

proposal and no TA; after a caucus County didn't know where it could go and agreed to include Union proposal in report; I didn't dispute Union's figures -- felt they would be honest and it was agreed by the parties to submit both proposals.

It would be difficult from this testimony to find there was any agreement between the parties on a wage adjustment proposal to submit to the Airport Director for adoption in the airport 2002 budget. And as the Local President testified, there is no guarantee in section 5.04 that an agreement would be or had to be reached. There was no testimony as to why the Human Resources Department submitted the report when it did but a reasonable conjecture is that time was running out to submit the Airport Director's budget under the County's budgetary process. Given my decision I find that I do not need to analyze the County's budgetary process under applicable statutes.

The County's recalcitrance in organizing the study committee after the parties' labor agreement was signed in February of 2001, and in scheduling meetings as noted by the County's Director of Labor Relations in a letter to Human Resources (Assn. 1), suggest a remedy that the parties should be directed to continue an attempt to reach an agreement. However, the language of 5.04 is clear that the agreement on a wage adjustment was to be for adoption in the 2002 budget.

Even assuming the budgetary testimony of Winiewski is correct, I do not believe under Wis. Stats. Sections 59.60 and 63.11 it would be possible for me to order any relief that could affect the bargaining unit employees' wages for 2002 or the 2002 budget and no testimony or evidence was introduced to lead me to believe or prove otherwise. I do not believe I have the authority and I would be adding language to the agreement to order the parties to attempt to reach an agreement to be submitted for a different yearly budget.

Based on the record as a whole, I issue the following

AWARD

The County did not violate section 5.04 of the collective bargaining agreement. The Grievance is denied.

Dated at Madison, Wisconsin, this 2nd day of January, 2003.

Paul A. Hahn /s/

Paul A. Hahn, Arbitrator

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