MUNICIPAL INTEREST ARBITRATION	*	
	*	
of	*	
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TOWN OF BROOKFIELD	*	
	*	
and	*	
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TEAMSTERS UNION LOCAL NO. 695	*	**ARBITRATION AWARD**
	*	
re	*	
	*	
WERC Case 6, No. 57338, **MIA-2255**	*	Decision No. 29700-A
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ISSUES

The final offers of the Town and the Union differ in two respects. The wording of paragraph (d) of the portion of Section 11.02 headed "Uniforms Required" differs in the following way. The Union offer states "The Town shall reimburse each member for their out-of-pocket expenses for their initial uniform purchase . . " while the Town offer states "The Town shall reimburse each member for their out-of-pocket expenses for the initial purchase of required uniforms . . ."

The second difference in the offers is the Town's inclusion of an additional clause in Article 16. Wages, Hours of Work and Overtime stating:

> 1617 **Part-Time Status.** It is understood that employees of the Town of Brookfield Fire Department are employed on a part-time basis. Accordingly, it is understood and agreed that no employee will be scheduled to work more than thirty-eight (38) hours per work week. In determining the number of hours an employee is scheduled to work during any work week, consideration shall be given to the number of hours the employee is scheduled for in-house staffing, the number of hours the employee would be compensated for being assigned to daily crews, and the number of hours the employee is scheduled to attend training sessions which are not conducted during in-house staffing hours.

INTRODUCTION

Teamsters Union Local No. 695, hereinafter called the Union, filed a petition for interest arbitration pursuant to Sec 111.77(3) of the MERA on behalf of the employees of the Town of Brookfield (Fire Department), hereinafter called the Town, on February 26, 1999. Informal investigation by a WERC staff member on 4/22/99 and 8/3/99 indicated that the parties were still at impasse. On September 1, 1999 the WERC issued an order for arbitration and

furnished the parties with a panel of arbitrators from which they selected an arbitrator. On October 14, 1999, the WERC then appointed the undersigned as arbitrator.

On November 30, 1999, a hearing was held at the Brookfield Town Hall. Appearing for the Town was Mr.James W. Hammes, attorney of Cramer, Multhauf & Hammes; appearing for the Union was Mr. Gene Gowey, Business Representative, Teamsters Union Local 695. Post-hearing briefs were filed by 1/7/00 and rebuttal briefs were filed by 1/28/00.

BACKGROUND

The Town started with a volunteer fire department. Over the years this became a paid on-call department with a full-time Chief. In a 1997 election conducted by the WERC, employees voted to be represented by IBT Local 695. Negotiations for a first contract started in 1998. Tentative agreement was reached by the Town and the Union on January 26, 1999. On February 2nd, the Fire Chief, Skip Sharpe, sent a memorandum to the Union representative, Gene Gowey, saying

> John Egan and I went over the tentatively approved contract yesterday. By and Large we are happy with it. . . .
> * * *
> As John and I read the contract, we found a few things where minor adjustments should be made to the wording . . . (Ex. 32)

Sharpe then listed seventeen changes showing words to be added and to be deleted. In addition, change number eighteen deals with the problem giving rise to this arbitration. In his memo dealing with point number 18, Sharpe quotes section 16.14, the tentatively agreed to overtime clause and goes on to explain his need for additional language.

> 16.14 "Overtime. All work in excess of scheduled bid shift hours and all work in excess of forty (40) hours per week shall be paid at the rate of time and one-half (1 1.2) the employee's applicable hourly rate of pay."
>
> NOTE: Gene, Paul points out that my authority to limit people to 40 or fewer hours a week is removed in this contract. Somehow, I need to insert language similar to : "<u>No employee may work more than forty (40) hours in any one workweek</u>

> without prior approval from the Fire Chief" because I have no authority nor is there any money in the budget to pay overtime. Plus we have historically limited people to a maximum of 40 hours per week. (Ex. 32).

The Union took the position that a tentative agreement had been reached and that it planned to ratify that agreement. It did so on February 8, 1999. The Town Board met on February 17, 1999. At an open session following the closed session of the Town Board, John Egan made a motion to approve the agreement between the Town of Brookfield and Teamsters Union Local 695. The motion died for a lack of a second. Thereupon the Union filed the petition for arbitration.

Subsequently the parties met with a WERC staff representative but were unable to reach agreement through mediation. The final offer of the Union is the tentative agreement that it ratified. The final offer of the Town is also the tentative agreement except for the two differences quoted above that became the issues in this dispute.

Although not in dispute, there are several changes in compensation that were agreed upon which need to be mentioned in order to understand the second issue in this dispute. Prior to this contract, employees bid on shifts up to a limit of forty hours. In addition, when on call, they received a flat rate if called in and a greater flat rate if sent out on an assignment. However, they were not paid to attend training sessions held outside of their shift hours. Under the new Agreement, employees will be paid their hourly rates for training outside of shift hours and will receive two hours compensation for signing up for a duty crew and being on pager call.

DISCUSSION

The first question to be resolved is whether the tentative agreement reached on January 26th was binding on the Town and the Union. The answer to that question is clearly "no." Just the fact that the agreement needs to be ratified by the Union membership and the Town Board shows that the results of negotiations are not legally binding until properly ratified.

In its brief, the Union argues that a tentative agreement is a sign of reasonableness and as such should be given considerable weight relative to a

subsequent proposal setting aside the terms of the tentative agreement. The arbitrator agrees with the Union on that point. Setting aside a tentative agreement tends to damage the bargaining process. Parties become less likely to compromise if they believe that a compromise agreed to across the bargaining table will be set aside by the governing authority of the other party. All other factors being equal, arbitrators are inclined to choose final offers reflecting tentative agreements rather than final offers that alter the tentative agreement.
(The Union brief contains several citations in support of this point.)

The arbitrator turns next to the two issues that distinguish the final offers from each other. The first issue --- the wording of paragraph (d) of the Uniforms Required portion of Sec. 11.02 of the final offers --- is really a non-issue. The addition of the word "required" changes nothing in the opinion of this arbitrator.

The Town proposed a Uniform policy that was tentatively agreed to 9/15/98 (See Ex.15). It defines the various uniforms, indicates the minimum uniforms a member must have, states which items the town will supply and which the member must purchase and those for which the Town will reimburse him when he completes his probationary period or Firefighter I training. Only on the basis of clarity could one say that the slightly revised language of the Town final offer is superior to that of the Union. In any event, the arbitrator believes that, since there is no difference between the offers, this issue carries no weight in determining which final offer is preferable under the statute.

The arbitrator turns next to the second issue --- the Town proposes the limitation on time worked of thirty-eight hours per week including two hour pager call and training hours outside of shift hours, and shift hours actually worked, The Union proposes a forty hour limit on shift hours only without regard to pager call compensation or training hours outside of normal shifts. The Town argues that the Union proposal will force it to routinely pay overtime while under its proposal, employees will receive forty hours pay including two

hours minimum call in pay which they would receive if, while on a duty crew, they responded to a call.

Testimony at the hearing supports the Union claim that some employees have been bidding and working forty hours per week. The arbitrator believes that, absent a sound reason to the contrary, he should not change the status quo. Since employees have been bidding forty shift hours in the past, changes in the method of paying for being on call or paying for training do not provide a justification for radically altering the bid limitations. Just how much overtime, if any, will be generated under existing practices is unknown.

Possibly, much of the training can be scheduled during shift hours. And, possibly, bidding patterns will be such that few if any individuals will receive overtime. For example, with the fourteen and ten hour shifts called for in the contract, an employee might bid two fourteen hour shifts and a ten hour shift. With training scheduled during his shift and two hours pager pay for being on call once in that week, the employee would be compensated for forty hours but would not be entitled to overtime. Finally, the Town raises an interesting point In its brief and in its rebuttal brief. The Town states that in the event the arbitrator selects the final offer of the Union, the arbitrator should affirm the right of the Town to establish working hours under the management rights provisions of the agreement (Sections 4.01(2) and (5). The Town states that

> The Town has a right, under the management provisions of the contract, to establish working hours. Thus, the Town has the absolute right to limit the number of hours the employees work irrespective of whether this section [Section 16.17] is included in the contract. However,it would be beneficial for both parties to have this section included in the contract as it will eliminate or reduce the number of future grievances that will inevitably result if this section is not included in the contract. (p.3, Town Rebuttal Brief)

The Union argues that the arbitrator has no authority under the statute to do other than select one of the two final offers as the more reasonable and equitable under the statutory criteria. Without any comment on this Union argument, and without regard to whether or not he is barred by statute from interpreting the management rights clause in the final offers, this arbitrator

declines the opportunity to give his opinion on this point.

In concluding this discussion, the arbitrator wishes to note that due to the nature of the issue in dispute, the Town made no reference to the statutory criteria. And, although the Union listed the criteria in its brief, it too recognized that this dispute was not one in which the more frequently cited criteria are relevant. If any criterion were to be cited, the one deemed most relevant in this dispute by the arbitrator would be 11.70(4)(cm)7r.j.,"such other factors . . . which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment . . ."

AWARD

After full consideration of the testimony, exhibits and arguments of the Town and the Union, and in accordance with Wisconsin Statute 111.70(4)(cm)7 the arbitrator selects the final offer of the Union and hereby orders that it be implemented.

February 11, 2000

James L. Stern
Arbitrator