

In the Matter of the Arbitration of an Impasse Between	Case 82
TOWN OF CALEDONIA	No. 59828
FIRE DEPARTMENT	MIA-2394
and	Decision No. 30252-A
TOWN OF CALEDONIA FIREFIGHTERS PROTECTIVE ASSOCIATION, LOCAL 270, IAFF	

Long & Halsey, by Victor J. Long, for the Municipal Employer.
Shneidman Hawks & Ehlke, Attorneys at Law, by John B. Kiel, for the labor organization.

The above-captioned parties selected, and the Wisconsin Employment Relations Commission appointed (Case 82, No. 59829, MIA-2394, Dec. No. 30252-A, 1/15/02), the undersigned Arbitrator to issue a final and binding award pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act resolving an impasse between those parties by selecting either the total final offer of the Municipal Employer or of the labor organization.

A hearing was held in Caledonia, Wisconsin, on March 25, 2002. A transcript was made. Briefing concluded on June 5, 2002.

The collective bargaining unit covered in this proceeding consists of fire fighter personnel in the employ of the Municipal Employer. There are approximately 33 such employees.

The parties are seeking an agreement for 2000, 2001, and 2002.

Wages

The parties have agreed to across-the-board increases for the unit members in all represented ranks to occur on January 1 and July 1 of 2000, 2001, and 2002. The Union proposes

that, in addition, effective January 1, 2000, an “after 4 year” step be added that is 2% above the top step. The Employer would add this step and increase on January 1, 2002.

Overtime Rate

The Employer would maintain contract terms that provide for time and one-half pay whenever it would be required by law or the contract. Under these terms an employee who is not entitled to the overtime rate under the Fair Labor Standards Act because of being on leave during the relevant period is not paid at that rate.

The Union would add terms that would require that such employee be paid for such time at the overtime rate, despite the leave.

The Assistant Mechanic Position

The Municipal Employer would add the following language: “The assignment of Mechanic and Assistant Mechanic can only be filled with bargaining unit members working out of Station #1. The Town shall endeavor to post vacancies for Mechanic and Assistant Mechanic within thirty (30) calendar days and shall endeavor to fill vacancies within thirty (30) calendar days of posting.”

The labor organization proposal is identical except it omits the word “calendar” in the ultimate clause.

Training

The Municipal Employer proposes the following provisions:

All off-duty employees who are ordered by the Fire Chief, Assistant Chief or Battalion Chief to attend additional training shall be paid at the rate of one (1) and one-half (½) times their regular rate of pay for such time actually worked. Off-duty employees who attend training required to fulfill a condition of employment shall be compensated at one (1) and one-half (½) times their regular rate of pay. Off-duty attendance at training required to fulfill a condition of employment will require the approval of the Chief or his designee and approval will only be given when training cannot be scheduled during duty time.

On the other hand, the labor organization proposes:

All employees who are ordered by the Fire Chief, Assistant Chief or Battalion Chief to attend additional training on the employee's off day shall be paid at the rate of one (1) and one-half (½) times their regular rate of pay for such time actually worked. Employees who, on an off day, attend training required to fulfill a condition of employment shall be compensated at one (1) and one-half (½)

times their regular rate of pay. Off-duty attendance will require the approval of the Chief or his designee and approval will only be given when training cannot be scheduled during duty time.

The parties seem to agree that there is no substantive difference between these proposals.

Exposure Provision

The Municipal Employer proposes the following terms:

The Town will be required to provide testing, treatment and care to all Fire/EMS personnel when a medical facility notifies the Fire Department or Town that the Association member has been significantly exposed to a bloodborne or airborne pathogen. Such testing, treatment and care shall be provided on duty time unless management otherwise directs the Association member. Association members who are authorized to go to a medical facility by management on an off duty will receive one-and-one-half (1 ½) time their regular rate or pay. An Association member who is denied authorization to obtain testing, treatment or care on an off day may still obtain such testing, treatment or care then seek review of the management decision through the grievance procedure. This Article does not apply to employees who are absent on workers compensation leave.

The Union offer is:

The Town will be required to provide testing, treatment and care to all Fire/EMS personnel represented by the Association when a medical facility notifies the Fire Department or Town that the Association member has been significantly exposed to a bloodborne or airborne pathogen. Association members who have been significantly exposed to a bloodborne or airborne pathogen shall be entitled to immediate testing, treatment and care on the duty day of exposure, to the extent practicable. In the event immediate testing, treatment and care on the duty day of exposure is impacticable, [sic] or if the Association member is notified of his/her exposure while they are off duty, the Association member remains entitled to immediate testing, treatment and care, and shall receive one-and-one-half (1 ½) times their regular rate of pay for all off-duty time spent in obtaining such testing, treatment and care. The one-and-one-half (1 ½) times pay portion of this provision does not apply to employees who are off-duty on worker's compensation leave.

DISCUSSION:

In the judgment of the Arbitrator the selection of a final offer in this case should focus upon the parties' wage proposals. Those proposals will certainly affect both the Municipal Employer's costs and unit members' compensation immediately, and probably into the indefinite future.

On the other hand, all of the other matters in dispute, if they are at all consequential, address possibilities and anticipate less significant impacts upon the Employer and employees. Moreover, none of the parties' offers on these other items seem unreasonable.

The parties agree that comparison should be made, as it was in a previous interest arbitration, to the cities of Cudahy, Franklin, Greendale, Greenfield, Oak Creek, and South Milwaukee; and the Town of Mount Pleasant.

The Union argues that the parties' agreement on most of the wage schedule represents their concurrence that the compensation of this unit should catch up with those of the comparable municipalities, and that their single disagreement is over exactly when that catch-up should occur. It urges that, by delaying the 2% increase in issue until the final year of the new agreement, the Employer's offer "further erodes the wage standing of Caledonia fire fighters." The Town replies that available data do not suggest such erosion, but rather a stabile disparity, under its final offer.

The Employer also contends that, while "the Town is not making an ability to pay argument," the relative cost of the Union's offer, particularly because it would materialize as part of a "back-pay" obligation, will jeopardize the Town's minimum fund balance, and, as a consequence, the Town's position before bond rating agencies.

The Town also argues that because the parties' wage offers will ultimately result in the same wage rates, comparison to other municipalities is "less relevant" and "the amount of back pay" is "more relevant."

The Arbitrator is concerned by this emphasis on the impact of retroactivity. It is a creature of the parties' failure to reach an agreement which should not be reinforced or rewarded. The fundamental intent of the statute in general, and final-offer arbitration such as this in particular, is to motivate bargaining to a consensual conclusion.

Likewise, if the "back-pay" obligation that so concerns the Employer has been made onerous by political or economic developments that occurred during the course of the negotiations preceding this Award, it demonstrates the risks of delay in concluding negotiations.

Settlements are a conventional and often wise means of reducing risk, including the risk of unanticipated influences upon financial condition. An award that would suggest otherwise seems to foster delay and even impasse.

AWARD

On the basis of the foregoing, and the record as a whole, as well as all of the factors specified at Section 111.77(6) of the Municipal Employment Relations Act, the undersigned Arbitrator selects the final offer of the labor organization.

Signed at Madison, Wisconsin, this 31st day of July, 2002.

Howard S. Bellman
Arbitrator