

EDWARD B. KRINSKY, ARBITRATOR

In the Matter of the Petition of :
 :
Village of Greendale :
 :
For Final and Binding Arbitration Involving :
Fire Fighter Personnel :
 :
and : Case 68 No. 60675 MIA - 2434
 : Decision No. 30432-A
Local 1777, International Association of :
Fire Fighters :

Appearances: Davis & Kuelthau by Ms. Nancy L. Pirkey, for the Village

Mr. Joe Conway, Jr. 5th District Vice-President, for the
Association

On August 23, 2002 the Wisconsin Employment Relations Commission appointed Edward B. Krinsky as arbitrator "to issue a final and binding award in the matter pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act."

A hearing was held on October 31, 2002 at Greendale, Wisconsin. A transcript of the hearing was made. At the hearing the parties had the opportunity to present evidence, testimony and arguments. The record was completed on January 3, 2003 with receipt by the arbitrator of the parties' reply briefs.

The following issues are in dispute:

1) Wages: Both parties' final offers propose a three year Agreement with wage increases effective on January 1st of 2002, 2003 and 2004. The Village offers increases of 3.25% on each of those dates; the Association offers increases of 3.5% on each of those dates.

2) Article XVII - Health Insurance; 17.05 - Opt Out. The Association's final offer proposes to change the Opt Out figure from \$ 2000 to \$ 3000. The Village makes no proposal on this item.

Both parties' final offers contain identical language pertaining to "Letter of Agreement" in the Health Insurance article.

3) Article XXI - Holidays and Vacation. The Association's final offer proposes to change Easter Sunday from a half-day holiday to a full-day holiday, effective January 1, 2003. The Village makes no proposal on this item.

4) Article XXXIV - Duration. Both parties' final offers propose identical Duration language, the dates of the proposed Agreement being from January 1, 2002 to December 31, 2004.

5) Article VI - Rules and Regulations: The Association's final offer states, "6.01 - Update and revise the Greendale Fire Department Rules and Regulations as per agreement made between the Fire Chief and Local 1777 during current negotiation meetings." The Village makes no proposal on this item.

The parties are in agreement that six other area municipalities are appropriate to use for making comparisons with conditions in Greendale: Cudahy, Franklin, Greenfield, Oak Creek, St. Francis and South Milwaukee. They disagree about the appropriateness of Hales Corners as a comparable. The Village urges that Hales Corners be included; the Association urges that it be excluded.

There have been three prior interest arbitrations between these parties in which Hales Corners has not been cited as a comparable. In a recent interest arbitration between the Village and its police, Arbitrator Malamud included Hales Corners as a comparable. In the present proceeding, the arbitrator is persuaded by the Association's arguments that Hales Corners should not be used as a comparable, because, unlike the six agreed upon comparables, Hales Corners uses volunteer firefighters. Moreover, for this reason, the Village does not rely on Hales Corners in any fashion in making economic comparisons in this proceeding. In so concluding, the arbitrator is not making any negative judgment about the inclusion of Hales Corners as a comparable in arbitrations with police, or other bargaining units. It simply is not an appropriate comparison in this proceeding because the parties have presented no evidence or arguments on any issues for which a comparison with Hales Corners would be relevant.

Issue #1 - Wages

The Association proposes an annual 3.5% wage increase because it "...is determined to stop the erosion [of Greendale firefighters wages] in a fashion that does not place an undue burden on the Village taxpayers at one time, but instead will attempt to rectify it over a period of time that weighs the public's interest against the continued injustice of a Village that pays its firefighter at a wage that is considerably below its internal and external comparables."

The Village offers a wage increase of 3.25% each year, which it views as reasonable in light of the comparables and consistent with internal settlements. For 2002-2004 each of the other internal bargaining units voluntarily settled, either for across the board increases of 3.25% or, in one bargaining unit, for a cents per hour settlement which averaged 3.24% each year.

The parties agree that in the 1999-2001 settlement, the Village's other bargaining units received annual wage increases of 2.95%, and the settlements were voluntary. The Association also settled voluntarily. It sought pay for those individuals who were on Hazmat or Confined Space teams. The Village gave the Association the option of an annual 2.95% wage increase with no additional payment for special teams, or an annual 2.5% wage increase with a payment of \$ 200 for team members. The Association selected the latter alternative.

The Association argues, "Whether the firefighters were misled or miscalculated the total package for the three-year period, they ultimately agreed to less than what the pattern was for the rest of the Village." The Association argues, "...it is clear that there was a miscalculation in the costing of the Hazmat premium pay, it should not have cost the firefighters a 0.45% reduction in wages for each of the three years covered by the last contract. There should have been only one year of the 0.45% reduction in wages. Even though this was voluntarily agreed to, it is clear after the fact, that the premium pay cost the firefighters three times more than what it should have." The Association views its final offer as more reasonable than the Village's and particularly in light of the Village's unwillingness to "fix a past injustice."

The Village emphasizes that in the last bargain "...the Association voluntarily agreed to take a lower wage increase to receive a new benefit, special teams pay." In the Village's view, it is not appropriate for the Association to now argue catch-up where it elected to take a new benefit combined with a lower wage increase. "The Village should not be penalized, and the Association should not be rewarded, for its voluntary agreement three years ago." In fact, the Village argues, the Association bargained the same percentage increase each year as was bargained by the Village's other bargaining units, but it chose to take some of the increase in a different form.

The Village does not disagree with the Association's assertion that the result of the 1999 bargain was to widen somewhat the gap between the wages received by police and firefighters, although the Village emphasizes (and the Association does not dispute) the fact that there has never been parity between police and firefighter pay in the Village, and the Village again emphasizes that this widened differential "...was solely the choice of the firefighters." The Association agrees that there was never parity with the police, but argues that from 1991-95 firefighters consistently received 0.99% less than police, and now that gap has widened to 3.58%.

The Association argues that the firefighters have fallen further behind the wages paid by the comparables, and that the Village's final offer if implemented would maintain that deterioration, while the Association's final offer would move in the direction of restoring the relationship. According to the Association, "It is abundantly clear from the Union's exhibits that the Greendale Firefighters have fallen behind their external comparables and as such justified the argument to begin the process of 'catching-up' to those external comparables to provide competitive wages and benefits."

The Village does not dispute the Association's comparisons, but again notes that the deterioration results from the Association's choice to take an annual 2.5% wage increase, and it notes correctly that the .45% value of the pay for special teams is not reflected in the wage rate when comparisons are made. The Village argues, "the Union should not be given a higher wage increase in arbitration to offset a mistake it made when it settled the 1999-2001 contract." The Village notes also that the Association did not offer to remedy its mistake by offering to give up the special teams pay, or anything else, in return for a higher wage increase than given to the other bargaining units.

The Village views its final offer of 3.25% as more reasonable than the Association's final offer, and as identical to the wage increases accepted voluntarily by the other bargaining units in the Village. It argues also that its offer of 3.25% doesn't alter the Village's ranking among the comparables.

Issue #2 Opt Out Pay

The existing benefit in the 1999-2001 Agreements, given by the Village to all of its bargaining units, was a payment of \$ 2000 annually to employees who did not take the health insurance offered by the Village. In the most recent round of bargaining, the Village offered to increase that amount by \$ 1000, to a total of \$ 3000 to any bargaining unit which settled its negotiations voluntarily. Each of the units settled voluntarily, except firefighters. The parties are in agreement that only one firefighter currently receives the opt out benefit.

The Association argues that its members should receive the same opt out pay as was offered to all other employees of the Village, and that to withhold it from them because the Association did not settle voluntarily is punitive. The Association notes that in the past firefighters have received the same health benefits as other employees of the Village, and an award in favor of the Village would change that.

The Village argues that the existing opt out benefit is more generous than what is paid by the majority of the comparables, since only two, Oak Creek and St. Francis pay opt out benefits. The Village argues also that the Association has not offered any *quid pro quo* to the Village in order to receive an increase in the opt out benefit.

The Village argues that the increase in opt out pay to the other internal units was a reward for settling voluntarily, and not punishment of the Association, which did not settle voluntarily. "Obtaining a voluntary settlement saves time, effort and expense, as well as maintains harmonious employee/employer relationships."

The Association notes that it was the Village which petitioned for arbitration in this proceeding, and it argues that the Association wanted to settle voluntarily. In the Association's view, voluntary settlement isn't a *quid pro quo* for obtaining the increased monetary benefit; rather, "it's ransom and it is inconsistent with bargaining in good faith."

Issue # 3 Holidays

The effect of the Association's proposal, if implemented, would be to give firefighters a total of 11 paid holidays, an increase from 10 1/2. The parties are not in agreement about how many holidays are paid in some of the comparable municipalities. They agree on the following: Cudahy 10; Greenfield 11; Oak Creek 10; St. Francis 10; South Milwaukee 12 (including 2 floating holidays).

They disagree about Franklin. The Association cites a figure of 13; the Village cites a figure of 10. The collective bargaining agreement in Franklin is in evidence, and in the Holidays Article indicates 10 holidays, plus three personal days. Thus, the Association's figure of 13 appears to be correct.

An analysis of these figures produces a median of 10.5 holidays. If Cudahy is excluded, because it has not settled for 2002, the median figure is 11 holidays.

The other internal bargaining units have 11 holidays. The Village argues that the Association has not offered a *quid pro quo* for its proposal to have an additional half-holiday. The Village argues that the additional holiday in the other bargaining units has resulted from bargaining. The Association argues that the Village has not offered any evidence that these other bargaining units offered a *quid pro quo* when they achieved a total of 11 holidays.

Issue # 5 Rules and Regulations

The Association's final offer proposes language for 6.01 of the Agreement. The final offer does not state that this is an addition to the current 6.01, nor does it specifically state that it is to replace the current language. The current language, in the 1999-2001 Agreement states: "The Union agrees that its members shall comply with all Fire Department rules and regulations including those relating to conduct and work performance. The Village agrees that actions taken under departmental rules and regulations affecting terms and conditions of employment shall be subject to Article XII, Grievance Procedure."

For contextual reasons, the arbitrator is also including the existing language of 6.02: "Rules and Regulations in effect on December 1, 1972 which affect terms and conditions of employment shall be considered as part of this Agreement. The Village may revise existing or adopt new rules and regulations relating to the conduct and performance of its business and of its employees, but the reasonableness of any such revised or new rule or regulation affecting terms and conditions of employment shall be subject to Article XIII, Grievance Procedure..."

The Association asserts that its proposed language simply reflects the parties' prior agreement and isn't burdensome, "...and will not erode any management rights nor tread on any permissive or prohibited subjects of bargaining." It argues further, "...the net effect would be for the parties to meet and discuss the rules and regulations and only

modify them if there is mutual consent." Association President Hintz gave unrefuted testimony that in return for the Association's agreement to drop a grievance, the Village agreed to create a committee to update the Rules and Regulations. That Committee has not been formed.

With respect to this issue, the Village argues, "the information and record is not specific and is too vague to address." Moreover, it argues, "the Association's final offer... did not contain a clear-cut proposal with respect to any specific work rule, timeline for meeting, or outcome of [sic] the parties could not agree to modify any or all of the work rules." The Village argues further, "the Association's offer is just too vague to offer a meaningful response," and it is not clear that any specific rule needs to be changed.

Discussion:

The statute requires the arbitrator to consider certain criteria in selecting one party's final offer. Several of the criteria were not the subject of the parties' testimony, evidence and arguments, and will not be considered further: a) the lawful authority of the employer; b) stipulations of the parties that part of (c) pertaining to the Employer's financial ability to meet the costs of the final offers; (d)(2) comparisons of wages, hours and conditions of employment with those of employees in private employment; (g) changes in circumstances during the pendency of the arbitration proceedings. The remaining factors will be considered below [c) the interests and welfare of the public; d) (1) comparisons with public employment in comparable communities; e) the cost of living; f) overall compensation; h) other factors normally taken into consideration in bargaining...or arbitration].

With respect to item (5) above, the Rules and Regulations, the arbitrator does not view this item as significant, since in the past both parties have agreed on the need to revisit the rules and regulations. Selection of the Association's final offer, should that occur, would not cause hardship to the Village with respect to this item, since it has previously agreed to revisit, and update and revise the Rules and Regulations as needed.

With respect to the wage issue, the parties differ by .25% in each of the three years of the proposed Agreement. The Village's final offer is consistent with its settlement with each of its other three bargaining units. The Association's final offer exceeds these settlements by .25% in each of the three years. The Association's rationale for its proposal, with respect to the internal comparables, is two-fold.

First, the Association argues, implementation of its final offer would be movement in the direction of restoring the historical relationship of the relative pay of firefighters as compared to police. The parties agree, however, that there has never been parity between the firefighter and police units, either as a matter of fact, or as a stated and/or agreed upon goal. Thus, the Association's argument in this regard is not persuasive.

Second, the Association argues, the firefighters received less of an increase than the other units in the prior bargain. It is true that the firefighters received less of an increase

on the wage rate than did the other units, but , as the Village emphasizes, they did so by their choice when they opted to forego part of the wage increase in favor of the Village's agreement to pay for participation on special teams. The Village notes correctly that in the present bargain the Association has not proposed to undo that bargain and give up the special teams pay or some other economic item, in order to regain what it voluntarily gave up in wage increases to achieve the special teams pay.

The Association's argument on this point is neither compelling nor persuasive, and the Village should not now have to pay a premium to the firefighter bargaining unit to make up for a bargain which the Association entered into voluntarily in the last round of negotiations. There is also no evidence that there was any mistake, or that anyone was misled during the prior bargaining. It may be the case that the Association did not foresee fully what the results of its bargain would be, but that is not a sufficient basis for granting it a higher wage rate now than has been granted to the other internal bargaining units. It is the case, however, that the parties calculation of the package for 2000 and 2001 was incorrect in terms of reflecting new costs. The 1999 increase in wages and special teams pay was correctly calculated as a 2.95% increase. The same cost increase calculation was used for 2000 and 2001 when in fact it was only a 2.5% increase in each of those years. The remaining .45% was the cost of the special teams pay, but it was not a new cost in 2000 and 2001, having been put into place in 1999.

With respect to the external comparables, there is insufficient settlement data for the years 2003 and 2004. The data for 2002 are complete, except for Cudahy. The median settlement, looking at the maximum firefighter pay rate, excluding Cudahy, is a 2.9% increase. Thus, the Village's proposed increase of 3.25% is both in excess of the median and closer to it than the Association's proposed 3.5% increase.

Looking at maximum pay in terms of dollars and ranking, shows that in 2001, the last year of the prior Agreement, excluding Cudahy for purposes of consistency, the median of the comparables for the top firefighter rate was \$ 47,510. The rate for Greendale was \$46,423, which was below the median by \$ 1087, and Greendale's rank was 5th of 6. For 2002, implementation of either of the party's final offers would result in Greendale's ranking continuing to be 5th of 6. Implementation of either party's final offer would result in improvement in relationship to the median (in comparison to 2001). The Village's final offer for 2002 would be \$ 885 below the median; the Association's final offer would be \$ 769 below the median.

An additional bit of analysis is helpful in weighing the final offers in relationship to the external comparables. It is helpful to see the relative position of Greendale to the comparables in 1998 which was the last year before the prior Agreement, and thus reflects the relative position before the Association entered into the arrangement which it now regrets because of its adverse affect on wage rates. In 1998, excluding Cudahy for purposes of consistency, Greendale's ranking was 4th of 6, in contrast to the ranking of 5th of 6 which results from implementation of both final offers in the current proceeding. In terms of dollar comparisons with the median, in 1998 Greendale's top firefighter pay was \$ 371 below the median. Thus, since 1998 under either final offer

there has been deterioration in relationship to the comparables' median, but less so under the Association's final offer than under the Village's final offer.

The Association presented data showing that deterioration of Greendale's wage position relative to the comparables has occurred since at least 1991. The arbitrator is not persuaded of the need to review those figures. As the Village has emphasized, the Agreements which were bargained during this period were voluntary agreements, not the result of arbitration. Thus, to the extent that there has been wage deterioration, it is something which the parties realized, or should have realized was occurring when they mutually arrived at their settlements. The Association's arguments are not persuasive that arbitration should now be used to begin to correct the results of years of voluntary bargaining.

Another consideration in weighing the final offers, under the statute, is the change in the cost of living. In the last year (2001) preceding the current bargain, the average monthly increase in the US City Average index was 2.82%. Thus, both parties' final offers are in excess of the most recent cost of living increase, with the Village's final wage offer being closer to the percentage change in the index than the Association's final wage offer.

During the term of the preceding three year Agreement (1999-2001), the average annual increase in the cost of living was, for each year, 2.23%, 3.38% and 2.82%. The wage increases to the firefighters during that period were 2.45% in each year; thus the wage increase in 1999 was above the cost of living change (+.27%) and in 2000 and 2001 was below the cost of living change (-.88% and -.32%). However, had the Association opted for wage increases instead of special teams pay, the 2.95% annual wage increases would have kept pace with the cost of living changes.

As indicated above, the percentage increases offered by the Village are consistent with the internal comparables, above the external comparables, and above the increases in cost of living. In dollar terms, the wages of the bargaining unit continue to lag behind the external comparables, but the Village's final offer results in improvement in that situation, although not as much as would be the case if the Association's final offer were implemented.

The arbitrator is somewhat troubled by the fact that the Village realized cost savings in 2000 and 2001 because of the way the costing of special teams pay was calculated, savings which it might not have realized if the Association had calculated the value of the package correctly and brought it to the Village's attention before the 1999-2001 Agreement was ratified. There is nothing to suggest that there was any deception involved, however, and the option of special teams pay given in lieu of wages was selected and approved by the Association. The parties may decide to address this matter in their future negotiations, but the arbitrator is not persuaded that this issue should compel acceptance of the Association's final offer in this proceeding.

With respect to the opt out issue, the existing \$ 2000 payment is more generous than what is paid by the external comparables, and thus there is no justification when viewing those comparables for the Association's proposal to raise opt out pay by \$1000.

The internal comparables favor the Association's final offer from the perspective that all of the other internal bargaining units now have \$ 3000 opt out pay. That, however, is a brand new development, the result of the current round of bargaining. The Village treated each of the bargaining units identically, including the firefighters. It conditioned the increased benefit on voluntary settlement of a new Agreement. It was put on the table as an incentive to settle, not "ransom" as the Association characterizes it. There was no voluntary settlement, and therefore the offer was withdrawn. The arbitrator does not share the Association's view that because the Village was the petitioner in the current proceeding, the Village did not want to achieve a voluntary settlement. Although the internal settlements favor the Association on this issue, the Village's bargaining strategy was a reasonable one. Moreover, the item itself is not significant when viewed in the larger context, in that it only affects one firefighter.

With respect to the holiday issue, the Association proposes to raise the number of paid holidays from 10 1/2 to 11, which is consistent with the other internal bargaining units, each of which has 11 paid holidays. The Village objects to this increase because the Association has not offered a *quid pro quo* for the additional half-holiday. The record does not make clear what *quid pro quo*, if any, was given by the other bargaining units when their holiday total reached 11 days. Leaving aside the question of *quid pro quo* the internal comparisons favor the Association's offer with respect to holidays.

With respect to the external comparables, excluding Cudahy for purposes of consistency, the median number of holidays is 11, which favors the Association's final offer.

In their briefs, one or the other party has made reference to the statutory factors pertaining to the interests and welfare of the public, and to consideration of overall compensation of the bargaining unit. The arbitrator is not persuaded by these arguments that greater weight should be given to one final offer more than the other based on these factors.

The statute requires the arbitrator to choose one final offer in its entirety. In the arbitrator's opinion, the wage issue is the most important of the issues in dispute, because of its economic impact. The other issues, whether considered singly or together are not as significant, and nothing about the form or substance of the parties' final offers on those items requires that they be given greater weight than the wage issue.

The arbitrator has concluded that under all of the circumstances of this case, the Village's final offer is the more reasonable.

Based upon the above facts and discussion, the arbitrator hereby makes the following
AWARD:

The final offer of the Village is selected.

Dated this 27th day of January, 2003 at Madison, Wisconsin

Edward B. Krinsky
Arbitrator