BEFORE THE ARBITRATOR

In the Matter of the Arbitration of an Impasse Between	:	
CITY OF LAKE GENEVA (FIRE DEPARTMENT)	:	Case 50 No. 61383 MIA-2472
and	:	Dec. No. 30724-A
LAKE GENEVA FIREFIGHTERS ASSOCIATION	:	

Appearances:

John B. Kiel, Attorney at Law, for the Association.

Davis & Kuelthau, Attorneys at Law, by Roger E. Walsh, for the Municipal Employer.

ARBITRATION AWARD

The above-captioned parties selected, and the Wisconsin Employment Relations Commission, (WERC) appointed (Case 50, No. 61383, MIA-2472, Dec. No. 30724-A, 11/17/03) the undersigned Arbitrator to issue a final and binding Award pursuant to Section 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 City or the total final offer of the Union.

A hearing was held in Lake Geneva, Wisconsin, on February 19, 2004. A transcript was made. Final briefs were exchanged on approximately May 6, 2004.

The collective bargaining unit covered in this proceeding consists of all non-supervisory firefighter personnel in the employ of the City. There are approximately 32 such employees. The parties are seeking an agreement for 2002, 2003, and 2004.

DISCUSSION

This bargaining unit was certified by the WERC, following a representation election, on December 5, 2001 (Case 45, No. 59035, ME-3782). The election was based upon the determination by the WERC that the bargaining unit members, who are paid-on-call personnel, are employees under the Municipal Employment Relations Act.

As a general matter, these employees are paid for the time that they actually spend in firefighting, emergency-medical, and related duties. They are distinct from the more common full-time firefighters and volunteer firefighter personnel. The former are typically paid on a salary basis, while the latter are often uncompensated.

The instant employees are typically employed elsewhere, where they earn the great majority of their income, and upon being summoned, often by a pager, proceed to either one of the City's two fire stations, or directly to the fire scene or medical emergency. They transport themselves to these destinations in their personal vehicles.

This arrangement, while not literally unique, does not occur in any other represented bargaining unit. Typical volunteer firefighters are not considered employees under the Municipal Employment Relations Act, and union-organized fire departments provide compensation for all on-duty hours. Thus, while this bargaining unit is covered by the Municipal Employment Relations Act it features an employment arrangement that is fundamentally different from the usual arrangement and, in the judgment of the Arbitrator, this difference impacts the application of this impasse procedure.

Specifically, it seems that this bargaining unit is not involved in a typical labor market. These employees all live within five miles of the City, are dependant upon other sources of income for their livelihoods, and participate in the work of the Department mainly in response to their personal desires to protect their lives and property, and that of their neighbors.

The competition for employment and for labor that characterizes a labor market is not an important factor here. These employees are unlikely to look elsewhere for similar employment should they separate from this employer. Their livelihoods and their neighbors, are in and around the City. The Municipal Employer is unlikely to replace these employees, should they be separated, except by fundamentally restructuring the Department, or looking further beyond its borders for personnel.

This non-labor market circumstance, in turn, affects the materiality of the comparisons upon which arbitrators heavily depend in determinations such as this. These comparisons are compelling because they provide relatively objective, empirical evidence of how the employees in issue are compensated, and otherwise treated, in the labor market in which they and their employer must operate. They reveal the various patterns[1] that usually determine such matters. They serve to rationalize determinations that might otherwise be based on fairly subjective judgments of worth and equity. This, it is presumed, is why the factors provided by the Municipal Employment Relations Act include so many that are comparisons. (See Section 111.77(6).

The Municipal Employer contends, and the Arbitrator agrees, that this determination must be based upon the statutory factors. However, for the reasons stated, the comparison factors seem inappropriate. Others of these factors are not brought to bear by the parties' contentions. These include the lawful authority of the Employer, the cost of living, and the financial ability of the community.

The Arbitrator would emphasize instead the factors that refer to "the interests and welfare of the public" and those "which are normally or traditionally taken into consideration in the determination of wages, hours, and working conditions of employment through

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[1]The City draws attention to the represented firefighter bargaining unit in the Town of Brookfield. The employment arrangement there is more similar than any other to the instant case. However, one such "comparable" hardly reveals any pattern.

voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

The impasse at hand occurred as the parties attempted to achieve their very first labor agreement, and includes numerous issues of compensation, benefits, employee and management rights. The Arbitrator must select one party's entire package of proposals on all of these disputed items. In this case, there are items in both parties' offers that are, in the Arbitrator's view, troublesome and less desirable than their counterpart in the other party's offer.

The issues that seem most compelling to the Arbitrator are the differences between the parties' offers on insurance, specifically life insurance, disability insurance, and vehicle insurance.

The employees proceed in emergencies in their own vehicles. The City's proposal provides that it will reimburse employees for damaged uniforms, clothing, vehicles or personal property up to a maximum of $300.00 per year. The Association separates the vehicle coverage to provide that the City will reimburse the employee for any deductible amount paid due to damage done "when using said vehicle in route to, during, or on return from any official duty …." It also specifies that the City may require that only insured vehicles may be used in such duties.

This discrepancy between the offers makes quite vivid the extent to which these employees may come to subsidize the City. While the amounts involved in such incidents are likely to be a few hundred dollars, these employees typically receive only a few thousand dollars per year in compensation. The City, on the other hand, pays no premium for the insurance nor does it provide vehicles.

As to life and disability insurance, the record does not disclose whether, or to what extent, the employees are covered by insurance either provided by other employers or privately

obtained. Neither does it indicate the incomes of these employees that such insurance might "replace;" or the circumstances of the employees such as their age, number of defendants, etc.

The Association's offer provides for substantially greater benefits than the City's offer and, in the absence of these data, it is not possible to ascertain if the Association's offer is excessive. What may be determined is the difference between the costs of the two proposals. According to the City's calculations, that difference is approximately $6600.00 per year.

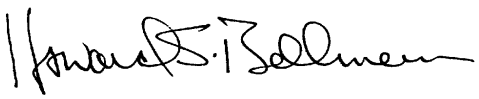
Firefighters risk life and limb, and property in this case. If these employees are otherwise insured, it is more than likely that the insurers have specifically excluded the risks of firefighting from their coverage. Considering the values that might be placed upon the lives and property in the community that is protected, it does not seem preferable to require them to also place their families at risk by under-insuring them. It does not seem to favor the interests and welfare of the community, or to be a sound human resources policy, to staff this Department only with such individuals who, for some reason, are willing to proceed without such protection. Rather, in view of the considerable economies of this employment arrangement as a whole, the increased premium cost seems quite acceptable.

As indicated above, examining the many other items in dispute, the Arbitrator found some proposals in both offers that seemed preferable. Only in comparing the offers as they proposed the above-discussed insurance benefits did one of the offers seem substantially preferable as a whole. The Arbitrator recognizes that, by selecting the Association's offer, this Award imposes all of the costs of that offer. That is the consequence of the particular statutory impasse procedure provided by the Municipal Employment Relations Act and the parties' failure to resolve more issues in collective bargaining.

AWARD

On the basis of the foregoing, and the record as a whole, it is the decision and Award of the undersigned Arbitrator that the final offer of the Association should be, and hereby is, selected.

Signed at Madison, Wisconsin, this 2nd day of July, 2004.



Howard S. Bellman
Arbitrator