Local 316, International Association of Firefighters	Decision and Award Case 358 No. 66439
And	MIA – 2743 Decision No. 32152-A
City of Oshkosh	Milo G. Flaten, Arbitrator

Scope and Background

This interest arbitration case arises as an aftermath of negotiations between the City of Oshkosh, Wisconsin and all of the employees of its Fire Department (except its Assistant Chief/Battalion Chief and Chief) that belong to Local 316, International Association of Firefighters over the terms of the collective bargaining agreement which was up for renewal for the years 2007 – 2009. (For purposes of brevity this document will hereafter refer to the City of Oshkosh as "the Employer", to Local 316 as "the Union."

The parties have had a long-standing relationship which has resulted in previous labor contracts, and this dispute was over the terms of a renewal contract for the years 2007 – 2009.

After the Union petitioned the Wisconsin Employment Relations Commission to initiate compulsory final and binding arbitration, the latter submitted to them a panel from which Milo G. Flaten of Madison was selected as arbitrator.

Following a weather postponement, a rescheduled hearing was held on December 21, 2007 in Oshkosh. Upon completion of the hearing, the parties submitted briefs and reply briefs to the arbitrator following a pre-arranged schedule. Appearing for the Union was Attorney John B. Kiel of Hawks, Quindel, Ehlke and Perry, S.C. of Milwaukee,

Wisconsin and for the Employer, Attorney William G. Bracken of Davis and Kuelthau, Labor Relations Coordinator.

Final Offers

Under Wisconsin law, public sector contract disputes require an arbitrator to choose between the "last best offer" of the parties. Before the dispute goes to an independent arbitrator, however, settlement conferences are held wherein an Employment Relations Commission representative is present as a mediator.

In this case, that WERC representative finally concluded an impasse existed concerning certain issues and that those issues should be decided by an independent arbitrator pursuant to Wisconsin law.

The salient feature of the Wisconsin "last offer" statute is that the arbitrator must select which of the two "final offers" is the more reasonable. He or she cannot piece together and choose fractions of each side's version. It's all or nothing. This forces each side to analyze its position before the hearing and adopt the most reasonable stance it can before presenting the matter to the arbitrator.

Both sides claimed their opponent failed to observe "Quid Pro Quo," a Latin phrase which roughly means "getting something in return for giving something." Negotiating parties are reminded of the song, *"You've gotta give a little, take a little"* as they conduct their discussions. Nevertheless, some parties tend to forget the third line, *"or let your poor heart break a little"*, as they strive to present their version of reasonableness.

In this case the two sides succeeded in smoothing out their differences on just about everything to be included in the upcoming contract. But some important items remained.

To characterize the parties' remaining versions in a single sentence is rather difficult but it seems fair to summarize those issues in contention as: (1) Wages, (2) Health Insurance, (3) Special teams pay, (4) retirement, (5) transport pay and (6) vacation entitlement.

Discussion

One aspect of the Wisconsin law that is somewhat unique is the requirement that arbitrators must give specific weight to eight factors, all of which are enumerated in Sec. 111.77(6), Wisconsin Statutes. Most of those factors are taken into consideration anyway but this observer was circumspect to apply the appropriate importance to each of them as he viewed the respective offers of the parties.

The two sides deemed statutorily enunciated factors to be (a) a comparison of the wages with other city employees performing similar services, and (b) a comparison with other employees generally.

In this connection the Employer feels its offer best matches the settlement pattern already reached with many other City of Oshkosh employees. This pattern is appropriately termed the "internal comparison."

On the other hand, the Union declares that the comparison of most importance should be that which compares other employees doing the same thing, i.e.

Firefighters with other Firefighters. This outside comparison is usually called the "external comparison."

The Union points to the Employer's contention that "*The major issue in this case is the employee's contribution to health insurance.*" Then the Union adds that "*..at its core, the question of wages and health insurance premium contribution are inextricably intertwined in this case."*

With regard to wages over the remaining life of the contract, the parties are relatively close. The Union has proposed a wage lift to each employee amounting to 3%. To this, the Employer proposed a 2.25% increase in 2007 and 2.75% increase in 2008 and 2009. Thus, it can be seen the Decision in this dispute should not be dependent on the proposed wage increase but rather on the employee's contribution to health insurance.

The parties currently have either a Preferred Provider Organization health insurance plan (PPO), or an Exclusive Provider Organization (EPO). Both plans predominantly use the Aurora network for hospital and medical care called Aurora Direct.

Under the Employer's final offer, each Union employee's contribution to health insurance would increase to 6% in 2008 and 7% in 2009.

The Union's final offer would have the contract maintain the exact same percentage and dollar cap that existed in 2006 for all three years of the contract.

Historically, the parties have always had a health plan in which there's been some monetary contribution from Union employees. In fact, the Union contributed more to the health plan fourteen years ago than the one it's proposing today in its final offer.

Yet, during that same period the record shows health costs have increased nearly 200% just since 1999. (Actually, since 1999 the PPO monthly health premium for a single employee has increased 186%.) Compare that to the Consumer Price Index for everything, which only went up 24% during that period. Additionally, for the upcoming years left in the existing Contract, it was established that health insurance premiums will increase 19% in 2008 and 10 to 12% in 2009.

Despite the fact that the record is replete with evidence showing precipitous, almost scandalous, increases in health insurance premiums, the Union's final offer, by maintaining the same employee contribution that was made in 2006 via salary caps, would mean those employees would be contributing less on a proportionate basis, than they did before.

On another issue, the Union in its final offer requests the addition of a paragraph which would pay Paramedics or EMT's who transport patients outside of Winnebago County, where Oshkosh is situated, a premium pay of $75 per transport.

To this, the Employer points out that transport of patients does not involve emergencies and there is no extra work involved. So why the premium payment? When a paramedic is assigned to transport patients, he or she is taken off the duty to answer 911 emergency calls. Paramedics are already receiving 4% extra pay as a premium for their additional skills and abilities.

The Employer then goes on to point out that paramedic pay is actually the highest of all the external comparable cities. In only one of those five comparable cities does the city award its employees transport pay. So there's no catching-up involved.

In still another issue, the Union's final would change the company that administers their deferred compensation plan. The record doesn't show any reason for doing so. Not only that, but such action could result in a lawsuit for breach of contract.

Decision

In view of the fact that the critical issue in this case is the employee's contribution to health insurance, and, in view of the Union's attempt to freeze its health care contribution to 2006 dollar "caps" which is very deficient to cover the huge changes which will occur in 2008 and 2009, the Employer's final offer is the more reasonable of the two parties. This is especially so in view of the settlement already reached with the Oshkosh Union representing the police department and other important city unions. For the Union to further grasp at more benefits such as changing the administrator of the deferred compensation plan or for demanding extra compensation to make rather routine ambulance transports, it seems sensible to this observer to decide that the Employer's final offer should be selected.

Award

That the provisions of the Employer's final offer should be included and administered as a part of the 2007-2009 contract.

Dated _____, 2008

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Milo G. Flaten, Arbitrator