

CASE NO.	
IN THE MATTER OF ARBITRATION between Fire Fighters Local 1793 IAFF Rice Lake, Wisconsin and City of Rice Lake, Wisconsin	OPINION & AWARD Impasse Arbitration 1. Inclusion of a grievance procedure; 2. Fair Share provisions Case II, No. 18409 MIA-115 March 3, 1975

Decision No. 13142-A

APPEARANCES -

For the Union

Ed Durkin, Vice President, 5th District I.A.F.F.
 Dewayne Siewert, Local 1293
 Allen Whitney, Local 1293

For the Employer

Forrest Nutter, City Council
 John Marcon, Mayor
 Harold Chartier, Chief of Fire Department

STATEMENT OF JURISDICTION -

Rice Lake Paid Fire Fighters Association Local 1793 having filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission initiate compulsory final and binding arbitration pursuant to Section 111.77(3)(b) of the Municipal Employment Relations Act for the purpose of resolving an impasse arising in collective bargaining between the Petitioner and the City of Rice Lake on matters affecting wages, hours and conditions of employment of firefighting personnel in the employ of said Municipal Employer; and the parties having been furnished a panel of arbitrators from which they might select a sole arbitrator to issue a final and binding award in the matter; and the parties having advised the Commission that they had chosen George Jacobs, Long Lake, Minnesota, as the arbitrator;

NOW, THEREFORE, it is

ORDERED

That George Jacobs, Long Lake, Minnesota, is hereby appointed as the impartial arbitrator to issue a final and binding award in the matter.

A Hearing was convened at 10:00 a.m., February 6, 1975 in Rice Lake, Wisconsin. The Union filed a post hearing brief, which was received on February 25, 1975. The Employer waived filing of a brief. The Hearing was considered closed upon receipt of the Union brief.

ISSUES CERTIFIED AT IMPASSE -

- Issue 1.** Whether a formal grievance procedure shall become part of the Collective Bargaining Agreement in effect between the parties?
- Issue 2.** Whether non-union bargaining unit employees should pay a fair share fee?

ISSUE NO. 1

POSITIONS OF THE PARTIES -

The Union's position in Issue 1 is that the following language be embodied in the Collective Bargaining Agreement in effect between the City of Rice Lake and Local 1793 IAFF:

"ARTICLE XXIII - GRIEVANCE PROCEDURE

(a) Both the Union Local 1793, and the City of Rice Lake, recognize that grievances and complaints should be settled promptly and at the earliest possible stage and that the grievance process must be initiated within fifteen (15) days of the incident.

(b) It is expected and understood that grievances and complaints between Firefighters shall be resolved by oral discussion between the parties involved, to the extent that such grievances or complaints are required to be reported to the Chief, the matter will be resolved as hereinafter set forth.

(c) Any difference of opinion, misunderstanding, complaints or grievance which may arise shall be processed as follows.

Step 1. The aggrieved employee shall present the grievance orally to his Chief accompanied by a Union Representative. The Chief shall discuss the grievance with the employee and the Union Representative and will give his answer in writing within three (3) days.

Step 2. If the grievance is not settled at the first step the grievance shall be presented, in writing, to the Fire and Police Commission within three (3) days of the Chief's answer pursuant to Step 1. The Fire and Police Commission shall, within five (5) days after such grievance is presented, hold an informal meeting with the aggrieved employee and the Union Representative. The Fire and Police Commission shall reduce their decision to writing and furnish a copy of the same within five (5) days of such meeting to all parties.

Step 3. If the grievance is not settled at the second step, the grievance shall be presented in writing to the Safety Committee of the Common Council within five (5) days of the Fire and Police Commission's written decision as required in Step 2. The Safety Committee shall within five (5) days of receipt of such grievance set up an informal meeting to be attended by all parties and their representatives. Within five (5) days after such meeting, the Safety Committee shall reduce their decision to writing and forward copies to all parties.

Step 4. If the grievance is not settled in the third step, arbitration is the next and final step, but must be requested in writing within five (5) days of the receipt of the Safety Committee's decision as in Step 3. The decision of the Arbitrator is to be final and binding upon both parties to the grievance.

(d) The term 'Arbitrator' as used herein shall refer to a single arbitrator.

(e) Final binding arbitration may be initiated by a notification in writing to the Wisconsin Employment Relations Commission. Said notice shall identify the Agreement provisions, the grievance or grievances and the department and employees involved. The W.E.R.C. shall submit the name of the arbitrator to be used.

(f) All expenses which may be involved in the arbitration proceedings relating to the calling of witnesses or the obtaining of depositions or any other similar expense associated with such proceedings shall be borne by the party at whose request such witnesses or depositions are required.

(g) The Arbitrator so selected shall hold a hearing at a time and place convenient to the parties. Statements of position may be made by the parties, and witnesses may be called. The Arbitrator shall have initial authority to determine whether or not the dispute is arbitrable under the express terms of the Agreement. Once it is determined that the dispute is arbitrable, the arbitrator shall proceed in accordance with the provisions of this article to determine the merits of the dispute submitted to arbitration.

(h) All records pertinent to the grievance of the aggrieved employee covered by this agreement shall be made available to the Union upon request for the purpose of handling grievances.

(i) Any period of time specified in this Article for the giving of notice or taking any action shall be interpreted to exclude Saturdays, Sundays and Holidays and may be extended by mutual agreement.

(j) In the event that the grievance arises out of the direct act of the Chief, the first step of the grievance procedure shall automatically be waived. The Employer agrees that departmental rules and regulations which affect working conditions performance shall be subject to the grievance procedure.

(k) The Union may appoint Representatives and shall inform the City of the names of the individuals so appointed and any change thereafter made in such appointments. The City shall allow the Representatives the necessary time to process grievances during the course of the duty day."

In support of that position, the Union offered the following comparative data:

1. Grievance Procedure from Superior, Wisconsin - Collective Bargaining Agreement with IAFF - Union Exhibit No. 1.
2. Grievance Procedure from Menominee, Wisconsin - Collective Bargaining Agreement, Union Exhibit No. 2.

3. Grievance Procedure from Chippewa Falls, Wisconsin - Collective Bargaining Agreement, Union Exhibit No. 3.
4. Grievance Procedure from Eau Claire, Wisconsin - Collective Bargaining Agreement, Union Exhibit No. 4.
5. Grievance Procedure from Johnson Truck Lines and IB Teamsters, Union Exhibit No. 5.

The Employer's position is that no procedure should be included on the basis of no compelling reason therefore. Also, there are no pending grievances at the present time, nor has there ever been any unresolved issues arise between the parties.

AWARD -

The Grievance Procedure as offered by the IAFF shall become a part of the Collective Bargaining Agreement in effect between the City of Rice Lake and Local 1793.

MEMORANDUM ON ISSUE NO 1. -

In the field of employee relations, whether the employees are organized or not, one of the most sought after protections is the right of orderly protest and appeal. Many firms and municipalities have a grievance procedure and binding arbitration even though their employees are not unionized. In situations where there is a bargaining representative, over 95% of all collective bargaining agreements contain a provision for protest, appeal and binding arbitration.

In the City of Sun Prairie, Wisconsin, Case IV, No. 16591, DR(M)-41, Decision No. 11703-A, the Wisconsin Employment Relations Commission issued a Declaratory Ruling:

"It is clear to the Commission that the authority granted to Police and Fire Commissions, pursuant to Sec. 62.13(5) with respect to discipline, suspension and/or termination of police and firefighters cannot be harmonized with those provisions in Sect. 111.77, relating to the authority of the arbitrators performing their function under the latter statutory provision. Secs. 111.77(d) and (h) specifically refer to 'conditions of employment' and ss. (f) among other matters, refers to the 'continuity and stability of employment'. Discipline, suspension or termination from employment affects an employe's working conditions, and most certainly has an effect on the stability of one's employment. Had the Legislature intended to exclude matters coming within the jurisdiction of Police and Fire Commission pursuant to Sec. 62.13(5) from those matters subject to final and binding arbitration in police and firefighter negotiations, it could have included such an exception in Sec. 111.77. Since the latter statutory provision was adopted subsequent to Sec. 62.13(5) it modifies Sec. 62.13(5), at least with respect to the authority of an arbitrator, appointed pursuant to Sec. 111.77 to issue a final and binding award containing a provision providing for arbitration of discipline, and suspension or termination of police and/or any other conditions affecting the stability of their employment.

Dated at Madison, Wisconsin, this 26th day of September, 1973

WISCONSIN EMPLOYMENT RELATIONS COMMISSION, by /s/ Morris Slavney, Chairman; /s/ Zel S. Rice II, Commissioner."

Thus, in the State of Wisconsin, it appears to be public policy to have a provision for orderly protest and appeal included in the Collective Bargaining Agreement.

In Minnesota, a neighboring state, the Minnesota Bureau of Mediation Services has promulgated a model grievance procedure which, by law¹ shall be used in the event that the parties fail to agree on a grievance procedure. The BMS Grievance Procedure provides for binding arbitration.

ISSUE NO. 2: POSITIONS OF THE PARTIES —

The Union's position on this issue is that the fair share provision, stated below, be included in the Collective Bargaining Agreement:

"ARTICLE XXII - FAIR SHARE AGREEMENT

The Rice Lake Paid Fire Fighters, Local 1793, voted by a majority to have a fair share agreement. This means; All Rice Lake Fire Department employees, excluding the Fire Chief and the officer in rank immediately below the Chief, will be required to pay their proportionate share of the cost of the collective bargaining process and contract administration measured by the amount of dues uniformly required of all members of the Rice Lake Paid Fire Fighters, Local 1793.

All employees will pay their dues as per Fair Share Agreement Section 111.70(1)(h), Wisconsin Statutes."

The reasons for the request for Fair Share are twofold:

"One is that under the law they must not only bargain for all members of their unit, but they must process all their grievances and problems legitimately brought to them by any member of their unit whether he pays dues or not. Two, Fair Share under Wisconsin Law provides for automatic payroll deduction and, in fact, failure to do so is a violation of 111.70(1)(h)."

Section 111.70(1)(h), Wisconsin Statutes, states:

"(h) 'Fair-share agreement' means an agreement between a municipal employer and a labor organization under which all or any of the employees in the collective bargaining unit are required to pay their proportionate share of the cost of the collective bargaining process and contract administration measured by the amount of dues uniformly required of all members. Such an agreement shall contain a provision requiring the employer to deduct the amount of dues as certified by the labor organization from the earnings of the employees affected by said agreement and to pay the amount so deducted to the labor organization."

¹Minnesota Public Employment Labor Relations Act 1971, as amended.

In support of their position, the Union submitted Union Shop provisions from two Rice Lake Employers:

1. Johnson Truck Bodies and Local 662 IBT; Union Exhibit No. 7.
2. Lampert Lumber Yards and Local 662 IBT, Union Exhibit No. 8.

Also, the Union contends that all the Wisconsin communities nearby Rice Lake, which have a paid fire department, have 100% membership. Only Superior, Wisconsin has a Fair Share provision.

The Union also contended that the City offered to "trade off" Fair Share for the Union's dropping of a grievance procedure.

The Employer's position on this issue is that no provision should be made for a Fair Share fee. The Employer contends that it is improper to force a non-union member to pay dues or to force him to join the union. Also, the Employer contends that it is an extra clerical expense to have to deduct dues or fair share.

AWARD —

The Fair Share provision as submitted by the Union shall be included in the Collective Bargaining Unit between the City of Rice Lake, Wisconsin and the IAFF Local 1793.

MEMORANDUM ON ISSUE NO. 2 —

There is no validity to the Employer's argument that Fair Sharing forces the non-union employee to join the Union. In fact, Fair Sharing is a method whereby an employee pays his share of the cost of the representation and efforts expended in his behalf by the Union. As the exclusive representative, the IAFF has to bargain for non-members as well as members. So long as the Union is the exclusive representative, this duty to represent exists. There may be other remedies at law available in the event that a majority of the bargaining group doesn't want a union to represent them.

Employee(s) who are not members but still receive the benefits of the Union efforts should pay their fair share of the cost of the efforts.

Both awards to Issues No. 1 and No. 2 are ordered this 3rd day of March, 1975.

George Jacobs
Arbitrator



