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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Final and Binding Arbitration between

CUDAHY FIRE FIGHTERS ASSOCIATION
LOCAL 1801, IAFF, AFL-CIO

and

CITY OF CUDAHY

" "

OPINION and AWARD

Case XVII
No. 20047 MIA-213
Decision No. 14361-A

Appearances: For the Employer
Mark F. Vetter, Esq., Mulcahy & Wherry
Marian Smith, Mulcahy & Wherry
Frank Janicek, City Clerk

For the Union
Edward Durkin, Vice President, IAFF
Clarence Bejma, President, Local 1801
Michael Knoll, Secretary, Local 1801
Jim Lukes, Member, Local 1801 bargaining team
John Zawikowski, Member, Local 1801 (witness)

BACKGROUND

On January 19, 1976, the Cudahy Fire Fighters Association, Local 1801, IAFF, AFL-CIO (the Union), filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting final and binding arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act in order to resolve the impasse between the Union and the City of Cudahy (the Employer). On February 23, 1976, the WERC found that an impasse existed and ordered that binding arbitration be initiated according to the provisions of Section 111.77(4)(b) of the Wisconsin Statutes. The Union and the Employer selected the undersigned as the arbitrator from a panel furnished by the WERC. By agreement, the arbitration hearing was held on May 14, 1976 at the Cudahy City Hall. Amended final offers dated May 7, 1976 were received by the arbitrator on May 10, 1976.

THE ISSUES

A collective bargaining agreement between the parties is currently in effect. The agreement for the period January 1, 1975 through December 31, 1976 provides for a reopener for the second year of the contract on three items. Two issues, subject to reopening, remain unresolved and the parties are at impasse. The issues and the parties' respective positions on these issues contained in their amended final offers are:

A. WAGES (Article 18, Appendix A)

Union's Final Offer: A wage increase of \$38.25 per bi-weekly check for each member of the bargaining unit. (See Appendix A, attached.)

Employer's Final Offer: A wage increase of \$76.75 per month for each member of the bargaining unit. (See Appendix B, attached.)

B. HEALTH INSURANCE FOR RETIREES BETWEEN THE AGES OF 55 AND 65 (Article 23)

Union's Final Offer: The Employer shall continue to pay 50% of the cost of hospital and surgical care insurance premiums for retired employees between the ages of 55 and 65 (up to the age of Medicare) provided that such employee is not employed elsewhere receiving hospital and surgical care paid for by his employer.

Employer's Final Offer: The Employer shall not extend coverage to those employees who retire between the ages of 55 and 65.

The parties agreed that this fringe benefit, if granted, would have no economic impact in 1976 since the only eligible employee reaching 55 in 1976 has been granted an extension of employment and will not be retiring in 1976.

POSITIONS OF THE PARTIES

A. THE UNION

Both at the arbitration hearing and in its brief, the Union contends that its final offer is more reasonable and meets the statutory criteria which must be weighed by the arbitrator better than the final offer of the Employer. In particular, it points to comparable wage, fringe benefit and cost of living data which, it claims, substantiate the Union's position. The Union denies the argument advanced by the Employer that the City is unable to pay for the Union's final offer. It points to substantial savings attributable to efforts of unit members completing many special projects and emphasizes the occupational hazards, both short term and long term, of the profession. Finally, it notes that while no unit fire fighter has yet been laid off, the subject has been discussed by representatives of the parties and there is some uncertainty as to continued employment for all members of the unit.

B. THE EMPLOYER

The Employer also contends in its brief and arguments that its final offer meets the statutory criteria which must be weighed by the arbitrator better than the final offer of the Union. In substantiating its position, the Employer places special emphasis on comparable data for combined wages and fringe benefits, its analysis of cost of living figures, and the inability of the Employer to meet the financial demands of the Union. Like the Union, it bases its position on health insurance for retiring members of the unit on comparable data but uses a broader survey of municipal and private employers.

DISCUSSION

A. THE WAGE ISSUE

The parties have identified the most pertinent of the statutory criteria on this issue as 1) comparisons of wages, fringe benefits and overall compensation of pertinent public and private sector employees; 2) changes in the cost of living and 3) the financial ability of the City to meet the costs of the Union offer.

department was substantially smaller (seven persons) than the other departments (17 to 33 persons). This reason continues to have merit this year to justify the exclusion of St. Francis. Union exhibits indicate that in 1974 the City of Cudahy ranked second in fire fighters salaries and paid \$7.46 above the average of the other five comparable communities. In 1975, the City ranked fourth, paying \$1.98 above the average of the five listed cities. In 1976, the City will rank fourth again, under either the Union's wage offer or the Employer's offer. If the Employer's wage offer were to be implemented, the City would be paying \$.45 above the average paid by the five cities; if the Union wage offer were implemented, the City would be paying \$2.49 above the average of the listed cities. If the wage issue is looked at in isolation, it appears that the Union's wage offer would better maintain the City's previously established relationships with other comparable fire fighters wages than the Employer's wage offer. This is particularly so in view of the fact that 1975 fire fighter salaries in Cudahy reflected the City's final offer.

The City argues that wages alone should not be considered. Instead total compensation, including overtime, longevity, uniform allowance, holidays, pensions, vacations, health insurance, and life insurance, is the proper measure to use. Using estimates for each of these categories, Employer exhibits indicate that in 1975 the City of Cudahy ranked second in total compensation out of a total of seven comparable communities and, utilizing the same comparative communities, it would only drop to third in total compensation in 1976 implementing the Employer's wage offer. Continuing this analysis, the Employer calculates that its 1976 offer to the fire fighters represents an increase of 8.4% in total compensation: an average of 7% for wages plus increased 1976 costs for uniform allowance, longevity, health insurance rate increases, "roll-ups" relating to overtime and higher rank pay, and additional Employer contributions for retirement. In contrast, the Employer calculates the Union offer as 7.56% for wages alone and 8.93% for total compensation.

Difference in emphasis between the parties is also apparent in another area. The Union is concerned with what it perceives as a growing disparity between salaries for City police officers in comparison to City fire fighters. The Union notes that this disparity will increase regardless of whether the Employer or the Association representing police officers is successful in a pending interest impasse arbitration proceeding. The Union is also concerned with salary disparities between fire fighters and skilled tradesmen in the private sector and between fire fighters and other City or school district employees. The Employer, on the other hand, argues that its wage offer for the fire fighters is based upon a policy of treating all City employees as equitably as possible. Thus, the City's present offer of 7% average for police officers is an identical average percent increase to that offered to the fire fighters and is between 1% and 2% more than its increase for fire captains and other managerial employees. The Employer further notes that there have been a number of layoffs of private sector employees employed by the larger employers located within the City of Cudahy (many of whose employees also reside in the City) and any comparisons with private sector employment should take this into account.

Taking all the above salary arguments into account, and keeping in mind the general principle that, during a reopener, a primary goal is to maintain the relative position of the parties established at the commencement of the contract term, the Union wage offer is to be preferred since it appears to continue Cudahy fire fighters in the same relative position for the second year of the existing contract. This tentative preference must now be tested against two other important standards: cost of living and ability to pay.

As to cost of living, the Union argues that Cudahy fire fighters have not kept up with the cost of living for the prior three years based upon data from the Bureau of Labor Statistics of the U.S. Department of Labor. A Union exhibit sets forth an Autumn 1974 Urban Family Budget which calls for an

intermediate budget of \$14,333 (four-person family), a higher annual income than the Union's final offer for lieutenants in 1976. It further points out that the intermediate budget figure must be adjusted upwards to take into account the two years of inflation plus an additional 5% calculated by the BLS for the Milwaukee Metropolitan area.

The Employer disagrees with the cost of living analysis made by the Union. It computes the increase in the cost of living for 1975 as the actual increase which occurred during the first year of the present contract. It calculates this to be 7% or the average wage offered by the Employer to the Union (in contrast to the Union's calculation of 9%). The City additionally notes that during the prior calendar year, Cudahy fire fighters received a wage increase of 9% or a total package increase of 11.41%, both well above the City's calculation of the cost of living increase of 7%

Although there is much that is meritorious in the Union's cost of living analysis, the Employer has satisfactorily demonstrated that its wage offer satisfies the cost of living criterion.

Finally, the argument advanced by the Employer that it is unable to pay the cost of the Union's proposed wage package must be considered because it may be decisive. The Employer argues that it is unable to meet the Union's offer because of a combination of declining revenue sources, tax levy limitations, and other escalating but necessary expenditures.

Specifically, the Employer notes that the actual 1975 levy for City purposes amounts to 99.7% of the total allowable levy. A referendum is required to exceed the mandated levy limitation and the Employer argues that it is not judicious to ask for such a referendum since the City already has the second highest tax rate on the south side of Milwaukee County and private employers are laying off workers. Added to this restricted financial outlook is the general adverse impact of the state mandated machinery and equipment exemption compounded by several successful assessment appeals and large, required indebtedness payments. This has produced a present revenue gap of almost \$85,000 which must be met by cutting budget expenditures in order to balance the budget.

The Employer's inability to pay argument is challenged, however, by the Union. Arguing that the difference between the two wage offers before the arbitration is approximately \$2000, the Union points to several problems relating to budgeting for fire department personnel. According to Employer exhibits, the fire department consists of 1 chief, 2 captains, 4 lieutenants and 23 motor pump operators or a total of 30 positions. In costing both the Union settlement of 1975 and the cost of the Employer and Union offers for 1976, Employer calculations assume 27 employees within the unit. However, according to an Employer prepared exhibit submitted in the 1975 fire fighters interest arbitration proceeding, the number of employees within the bargaining unit is 26 and this figure was used by Arbitrator Stern. The Union advances an explanation for this discrepancy by stating that there are now temporarily 27 employees within the unit but that this number will be reduced by one when an existing captain's vacancy is filled by promotion. At that time, the fire department will be at its regular complement of 1 chief, 2 captains and 26 members of the bargaining unit (lieutenants and motor pump operators).

Apparent inconsistencies of this type make it difficult to weigh properly an inability to pay defense. The Union additionally points out that the City has broad managerial flexibility to generate some budgetary savings by determining when to replace retiring supervisory personnel and how to fill existing vacancies. Reviewing a municipal budget in excess of \$4,400,000

to assess the Employer's inability to pay the approximately \$2000 additional cost of the Union offer is a very difficult task without further facts on the record to refute these Union arguments.

No arbitrator can ignore an inability to pay argument, particularly one advanced by a public employer facing a revenue gap and forced to make difficult decisions involving competing priorities. This defense, however, requires additional information about particular City budgeting and personnel practices which are not present in this proceeding; therefore, at this time the inability to pay argument cannot be determinative of the wage issue. Instead, the arbitrator must balance the cost of living standard with the general principle that a reopener should not significantly change the relationship of the parties established at the commencement of the contract. In this weighing the arbitrator favors the Union position on wages particularly in view of the undisputed productivity savings generated by the efforts of unit members working voluntarily on such projects as the painting of a new fire station and other similar endeavors. Considering the City's present economic plight, it is important that such productivity efforts be continued and even increased.

B. HEALTH INSURANCE FOR RETIRED EMPLOYEES

Although the parties have agreed that this item will have no practical effect upon the 1976 budget, the Union devoted a significant amount of time in its presentation to support the need, desirability, and feasibility of this proposal. The Union argued that the physical and mental stress of employment as a fire fighter was great, that this stress was the basis for special state legislation covering fire fighters (including mandatory retirement at 55 at the Employer's request), and that special health insurance needs of retired fire fighters between the ages of 55 and 65 have already been recognized by four of the communities comparable to Cudahy: South Milwaukee, West Milwaukee, Greenfield and Oak Creek. These communities provide either 50% or 100% of health insurance premiums for retirees from age 55 to 65. The Employer argues that its survey of fourteen Milwaukee area municipalities indicates that seven of the fourteen do not provide any such payments. A survey of the 16 largest Cudahy employers disclosed that only three paid all or a portion of health insurance after retirement. Particular employer concern was expressed about granting a fringe benefit to City fire fighters which a majority of Cudahy citizens do not enjoy and a benefit not extended to any other group of City employees. It, therefore, concludes that no trend has yet developed to justify the extension of this fringe benefit to Cudahy fire fighters.

It is apparent that few private sector employers would provide such insurance benefits since mandatory retirement prior to age 65 is not a general employment practice in the private sector. However, Wisconsin law states that a City has the absolute right to require a fire fighter to retire at the age of 55 or thereafter (although there is no requirement in the Union proposal that coverage be restricted to fire fighters involuntarily retired). The Union has made out a persuasive case that a pattern has been established for retired fire fighter coverage in communities already accepted for comparison purposes in the wage discussion above and previously accepted as comparables by the Employer and by Arbitrator Stern. This is particularly true when health insurance for retired fire fighters is one of only three items subject to reopening in 1976. The Employer has thus acknowledged by implication some legitimacy, although limited, of the concept of the demand. The Employer's primary concern appears to be whether a trend has developed sufficiently to justify extension of this benefit at this time. Practices in comparable communities favor the Union's position.


The strongest argument advanced by the Employer is that there is no immediacy for deciding this issue (since no one will qualify for benefits in 1976) and thus it should be left to the parties to bargain in future negotiations. While this position has some merit, the absence of any City plan offering group

coverage for retirees for which the retiree assumes full financial responsibility strengthens the Union's argument for a plan to extend some benefits to fire fighters. Moreover, the Union's offer has two important limitations: it requires the payment of one-half of the premium by the employee and it is not available for retired fire fighters who secure employment elsewhere where there is employer paid hospital and surgical care insurance. The parties are always free in subsequent negotiations to modify the Union's present proposal so that it will meet their mutual requirements based upon actual experience.

AWARD

Based upon the statutory standards, the exhibits, arguments, and briefs of the parties, and the reasons stated above, the arbitrator selects the final offer of the Union and orders that it be incorporated into the existing collective bargaining agreement between the parties effective January 1, 1976.

June 17, 1976


June Weisberger
Arbitrator

APPENDIX 'A'
Schedule of Salaries
Cudahy Fire Department

	1976 <u>Bi-weekly</u>
<u>Motor Pump Operators</u>	
First Year	\$482.80
Second Year	\$510.47
Third Year	\$523.05
After Third Year	\$548.20
<u>Lieutenants</u>	\$585.93

Appendix 'B'
Schedule of Salaries
Cudahy Fire Department

	<u>1976 Monthly</u>	<u>1976 Annual</u>
<u>Motor Pump Operators</u>		
First Year	\$1,039.94	\$12,479.28
Second Year	1,099.89	13,198.68
Third Year	1,127.14	13,525.68
After Third Year	1,181.64	14,179.68
<u>Lieutenants</u>	1,263.39	15,160.68