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 Municipal Interest Arbitration *
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 Between *
 *
 CITY OF RACINE *
 *
 -and- *
 *
 INTERNATIONAL ASSOCIATION OF *
 FIRE FIGHTERS LOCAL 321 *
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 Re: Retirement Gratuity & Dental *
 Insurance: WERC Case, MIA-248 *
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ARBITRATION AWARD
 Arbitrator: James L. Stern
 Case LXX
 No. 20505 MIA-248
 Decision No. 15001

ISSUES

- (a) Whether or not the Fire Fighters' proposal that the Retirement Gratuity provided in Article XXII, Section 4 shall be increased for members of the bargaining unit covered under Chapter 41, Wisconsin Statutes, Pension Program from the present payment of Five Dollars (\$5.00) for each accrued sick day to a maximum of one hundred twenty (120) accrued sick days to a payment of twenty five percent (25%) of his base pay for accrued sick leave hours to a maximum of one thousand three hundred forty-four (1,344) hours for employees working twenty-four (24) hour shifts and to a maximum of nine hundred sixty (960) hours for employees working eight (8) hour shifts.
- (b) Whether the Fire Fighters' proposal that employees be allowed to purchase dental insurance with monies generated by the cost of living allowance (Cost of Living Escalator Clause) contained in the collective bargaining agreement between the parties shall be made a part of the collective bargaining agreement.

INTRODUCTION AND BACKGROUND

The hearing in the above identified dispute between the City of Racine, hereinafter identified as the Employer, and the International Association of Fire Fighters, Local 321, AFL-CIO, hereinafter identified as the Union, was held on December 9, 1976, in Racine, Wisconsin, before the undersigned arbitrator selected by the Employer and the Union from a panel supplied by the Wisconsin Employment Relations Commission. The Employer was represented by Dennis J. McNally, attorney of Mulcahy & Wherry; the Union was represented by Edward Durkin, 5th District Vice President, International Association of Fire Fighters.

The tentative agreement between the Employer and the Union for the period January 1, 1976 through December 31, 1977 is contained in the June 11, 1976 letter from the Employer to the Union (Employer Exhibit #2). The letter indicates that the parties reached agreement upon all items in dispute except the two identified herein which were referred to arbitration in accordance with Form 2 of Section 111.77(4)(a) of the Wisconsin Statutes. The June 11th letter was amended on July 8, 1976, to provide for separate consideration of the two remaining issues and to require the arbitrator to select either the position of the Union or the position of the Employer on each of the two issues in dispute.

At the hearing on December 9, 1976, the Employer and the Union presented exhibits and testimony and agreed that argument would be made by post-hearing briefs exchanged through the arbitrator. The arbitrator acknowledged receipt of the briefs and exchanged them on January 10, 1977.

DISCUSSION - Issue (a) Retirement Gratuity

Under the Agreement terminated at the end of 1975, fire fighters who were retired under Chapter 41 of the Wisconsin Statutes received five dollars (\$5) per accrued sick day to a maximum of 120 accrued sick days. Under the Union proposal for the new Agreement effective January 1, 1976, the retirement gratuity would be increased up to twenty-five percent (25%) of the maximum accrued sick leave of 1344 hours -- that is up to a maximum payment of 336 hours (.25 x 1344). As a percent of annual salary, this is approximately equal to the 25% of the 120 day accrued sick leave maximum paid to non-fire department full time employees as a retirement gratuity.

Both the Employer and the Union cite the practices of comparable communities in support of their respective positions. Nine of the ten cities selected by the Union and the Employer as comparable are the same. (See Employer Exhibit #13 and Union Exhibit #8.) As its tenth city the Union selected Oshkosh while the Employer selected Janesville. These two cities are approximately the same size, with populations of about 50,000 and the arbitrator believes, therefore, that it is proper to include both of them in the list of comparable cities.

Of the ten largest cities in Wisconsin, excluding Racine, four paid retirement gratuities to fire fighters according to contracts in effect in 1976 (Appleton, LaCrosse, Madison, and Milwaukee). Six others did not pay a retirement gratuity to fire fighters covered by Chapter 41 in 1976 (Green Bay, Janesville, Kenosha, Oshkosh, Wauwatosa, and West Allis). According to the Union, however, the City of Green Bay and the fire fighters' local union in that city have reached tentative agreement to pay a retirement gratuity effective in 1977. If that tentative agreement is reflected in the final agreement, and if one includes the City of Racine in the comparison, it appears that six of the eleven largest cities in Wisconsin will be paying retirement gratuities in 1977, while in 1976, five of these same cities, including Racine, were doing so.

Quite clearly, an arbitrator could select either the Union or the Employer proposal and still meet the comparability criterion set forth in 111.77. Essentially, about half the comparable cities provide this benefit and half do not.

Another aspect of comparability is the comparison of Racine fire fighters covered by Ch. 41 with other full time employees of the City of Racine. Item 12(c) of Employer Exhibit #13 shows that all full-time employees of the City of Racine except fire fighters and their officers receive 25% of the accrued sick days up to a maximum of 120 days while fire fighters covered by Ch. 41 receive only \$5 per day of accrued sick leave up to a maximum of 120 days. The arbitrator recognizes that this disparity may have been permitted to arise without great concern on the part of the fire fighters in the past because the gratuity was considered to be earnings in determining pension eligibility and therefore caused the deferral of pension benefits. Since the law changed in 1976 (Employer Exhibit #8) to exclude such payments from the definition of earnings in determining pension eligibility, it is understandable that the Union now presses more forcibly to eliminate the differential between fire department employees and other full-time employees.

The Employer does not deny that fire fighters receive a substantially smaller retirement gratuity than other non-fire department full-time employees but notes in Exhibit #13 that other fringes also are not uniform. In its brief, the Employer argues, for example, that only fire fighters receive educational incentive pay. The arbitrator acknowledges that this is a substantial fringe benefit but is unable to evaluate its uniqueness without considering the base pay of fire fighters and police -- information that was not furnished by either the Union or the Employer. Quite possibly, the educational incentive pay is related to the balance between police and fire fighter wages, a balance which is currently acceptable to all groups concerned. Furthermore, most of the fringes of the various units with which the Employer negotiates are the same.

On the whole, it seems to the arbitrator that the Union proposal to increase the retirement gratuity is slightly more equitable than the Employer proposal to leave it at its present level. The Union is not asking for a new benefit in this instance but only that the amount of the benefit be made comparable to the benefit paid to other full-time employees of the Employer. Finally, it should be noted

that the level sought by the Union is relatively modest compared to the maximum accrued sick leave gratuity paid upon retirement to fire fighters in the five other comparable Wisconsin cities who may be paying such a gratuity in 1977 (See Union Exhibit #8). The arbitrator recognizes that the increase in the gratuity for fire fighters covered by Ch. 41 will increase the total 1977 package slightly but since this is "catchup" he does not believe that it creates an inequity for other groups. For these reasons, therefore, the arbitrator will select the final offer of the Union on this issue.

DISCUSSION - Issue (b) Dental Insurance

The Union proposal on this issue is that the money generated by the cost of living allowance clause in the Agreement be used to purchase dental insurance. The Employer proposes that no action be taken on this proposal. In analyzing this issue, the arbitrator will rely heavily upon the same comparisons used in determining the other issue in dispute between the parties.

Of the ten other comparable Wisconsin cities listed previously, only Janesville provided dental insurance for its fire fighters in 1976; the others did not (See Employer Exhibit #5). Union Exhibit #2 shows that Green Bay and Oshkosh have offered to institute dental insurance programs in 1977. Even so, this would raise the proportion of comparable cities offering dental insurance in 1977 to only three out of ten. The arbitrator acknowledges that Union Exhibit #2 lists three other Wisconsin cities (Beloit, Neenah and Menasha) which provide dental insurance but does not find this evidence particularly convincing. For example, this same exhibit could be interpreted to mean that, out of the approximately three or four dozen local unions of the IAFF which bargain in Wisconsin, only three have dental insurance.

When the comparison is made between the fire fighters and other full-time employees of the City of Racine, it can be seen that none of the employees have dental insurance coverage (Employer Exhibit #4). Furthermore, Employer Exhibit #4 lists 19 other groups of public employees employed by the Racine Wastewater and Waterworks Commissions, the School District of Racine, and Racine County which do not have dental insurance. The Union, in turn, can only list three units which have dental insurance -- the Gateway Tech clerical and teacher units and the Town of Mt. Pleasant -- and one which is negotiating about this question -- Racine County courthouse employees (Union Exhibit #3). Comparisons with other city employees and employees of other public employers in the area show that most units do not provide dental insurance.

The Union claims in its brief, however, that "Union Exhibit 4 shows that the vast majority of private employees in the Racine area do receive dental coverage." (Page 6 of Union Brief). Union Exhibit #4 does list a considerable number of private sector employees who have dental insurance but does not show that a "vast majority" of such employees in the Racine area have such insurance. For example, how many private sector employees are there in the Racine area? (The arbitrator made a phone call to the Research and Statistics Section of the Wisconsin Department of Industry, Labor and Human Relations and was told by Mr. J. Hartley Jackson that, as of December, 1976, there were 54,900 private sector employees in Racine County.) The arbitrator believes that Union Exhibit #4 shows that a substantial minority of private sector employees in the Racine area (about 20,000 out of 55,000) have dental insurance but does not support the claim that a vast majority of private employees receive this benefit.

On the basis of comparability, therefore, it appears to the arbitrator that the Employer position should be chosen in preference to the Union proposal. Before so ruling, however, the arbitrator wishes to note that under the Union proposal the employees would be paying the direct cost of the insurance coverage (other than administrative costs which would be born by the Employer) and wishes to commend the employees for their willingness to accept the financial burden, at least at the outset, of providing for this new benefit. Even so, the introduction of a new benefit of this nature has far reaching consequences, not only for the Union involved in this dispute, but for all other employees of the City of Racine, and it is preferable that such a benefit be mutually agreed upon rather than instituted by the arbitrator.

The arbitrator therefore will select the Employer position but recommends that the Employer consider the establishment of a labor-management study committee involving the representatives of this Union and the other unions with which it negotiates in order to investigate the possibility of instituting a dental insurance program at the expiration of this Agreement. It is clear that dental insurance benefits are being provided by more and more employers and that it is only a matter of time before such benefit becomes common in both the private and public sectors. Under these circumstances, joint advance planning might be useful to all concerned.

AWARD

For the reasons noted above, and with due consideration of the evidence, testimony and arguments of the parties, the arbitrator finds that the position of the Union shall prevail on Issue (a) Retirement Gratuity and that the position of the Employer shall prevail on Issue (b) Dental Insurance, and orders that the 1976-77 Agreement of the Employer and the Union be amended as necessary to incorporate the findings of the arbitrator in this dispute.

James L. Stern /s/
James L. Stern, Arbitrator

1/26/77

January 26, 1977