MUNICIPAL INTEREST ARBITRATION

of

CITY OF MENOMONIE

and

LOCAL 1697, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

re

Lay-off and Re-employment Procedures, WERC Case XXVII, No. 21275, MIA-297

ARBITRATION AWARD

Arbitrator: James L. Stern

Decision No. 15330-A

INTRODUCTION

On January 24, 1977, the Menomonie Professional Fire Fighters Local 1697, International Association of Fire Fighters, hereinafter identified as 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 (MERA) in order to resolve the dispute between the Union and the City of Menomonie, hereinafter identified as the Employer. An informal investigation was conducted on February 22, 1977, by a WERC staff member who advised the WERC that the parties were at impasse and transmitted to the WERC the final offers of the parties concerning the unresolved issue. Thereupon, the WERC issued an order dated March 8, 1977, for arbitration of the impasse and furnished the parties a panel of arbitrators. The parties selected the undersigned arbitrator and the WERC, in an order dated March 21, 1977, appointed him as the impartial arbitrator to select either the final offer of the Union or that of the Employer and to issue a final and binding award in this dispute pursuant to Section 111.77(4)(b) of the MERA.

By letters dated March 29, 1977, and April 15, 1977, the Employer informed the arbitrator on behalf of itself and the Union that the parties had agreed to dispense with a hearing and to make their arguments by written briefs without rebuttals exchanged through the arbitrator by May 31, 1977. This procedure was followed and the arbitrator exchanged briefs on June 1, 1977. The Employer was represented by George A. Langmack, City Manager, City of Menomonie; the Union was represented by Ed Durkin, Vice President, International Association of Fire Fighters.

ISSUE

The sole remaining issue in dispute concerns the layoff and re-employment procedures to be specified in the agreement. The Employer and Union proposals are quoted below:

Employer Offer

Article X, Section 2

Section 62.13(5m) is adopted governing layoffs and re-employment.

(Section 62.13(5m) of the Wisconsin Statutes reads as folbws:)

DISMISSALS AND REEMPLOYMENT.

(a) When it becomes necessary, because of need for economy, lack of work or funds, or for other just causes, to reduce the number of subordinates, the emergency, special, temporary, part-time, or provisional subordinates, if any, shall be dismissed first, and thereafter subordinates shall be dismissed in the order of the shortest length of service in the department, provided that, in cities where a record of service rating has been established prior to January 1, 1933, for the said subordinates, the emergency, special, temporary, part-time provisional subordinates, if any, shall be dismissed first, and thereafter subordinates shall be dismissed in the order of the least efficient as shown by the said service rating.

(b) When it becomes necessary for such reasons to reduce the number of subordinates in the higher positions or offices, or to abolish any higher positions or offices in the department, the subordinate or subordinates affected thereby shall be placed in a position or office in the department less responsible according to his efficiency and length of service in the department.

(c) The name of a subordinate dismissed for any cause set forth in this section shall be left on an eligible reemployment list for a period of two years after date of dismissal. If any vacancy occurs, or if the number of subordinates is increased, in the department, such vacancy or new positions shall be filled by persons on such list in the inverse order of the dismissal of such persons.

Union Offer

Article X, Section 2 LAY-OFFS AND RE-EMPLOYMENT:

When it becomes necessary, because of need for economy, lack of work or funds or for other just causes, to reduce the number of Full-Time employees, the emergency, special, temporary, part-time, or provisional employees, if any, shall be layed-off in the order of the shortest length of service in the department.

In case of equal seniority, the names of the employees with equal seniority shall be placed on slips of paper and drawn out of a hat by the City Manager in the presence of the envolved (sic) members and union representatives.

The name of the full-time employees layed off for any cause set forth in this section shall be placed on an eligibility re-employment list. Should the city re-employ, re-employment shall be in the inverse order of the lay off. Those full time employees layed off shall be re-employed to the same full time position which they held prior to their lay off before any emergency, special, temporary, part-time or provisional subordinates are re-employed.

DISCUSSION

From the briefs of the parties, it is clear that the dispute in this instance concerns the re-employment rights of full-time firefighters. Under the Union proposal laid-off full-time firefighters must be returned to the same full time position which they held prior to their layoff before any emergency, special, temporary, part-time or provisional employees are re-employed. Under the Employer proposal, layoffs and recalls would be made by seniority but there would be no guarantee that a full-time firefighter would be recalled to his former full-time position.

The dispute is complicated somewhat by the fact that the Union brief maintains that the Employer is attempting to do something which the Employer does not claim the right to do in its brief. The Union states that "It is the City's position . . . that the part-time employees can be rehired immediately and before the full time fire fighters." (Union Brief, p. 6, lines 4-6). The Union is suggesting that the Employer may go through the paper process of laying off by seniority and then ignore seniority in the rehiring process and rehire the part-time personnel first.

The Employer proposal, however, does not claim this right. Section 62.13(5m), subsection (c) clearly provides that positions will be filled in the inverse order of dismissal. The Union brief quotes only subsection (a) of 62.13(5m) concerning layoff and argues that under the Employer proposal, the Employer will be able "to substitute part-time employees for full time employees with more seniority" (underlining added). Under the Employer proposal, however, re-employment will be in the inverse order of the dismissal of the employees.

Since all part-time employees must be dismissed first before the least senior full time firefighter, the arbitrator does not see how part-timers could be recalled ahead of full-timers so long as recall follows the inverse order of dismissal specified in subsection (3) of 62.13(5m). It appears to the arbitrator, therefore, that the major argument put forth by the Union is not relevant. The Union argues that it does not want part-timers recalled prior to the recall of firefighters laid off from full-time positions. The language of 62.13(5m) sub (c) does not permit this and the brief of the Employer does not claim the right to do so.

The arbitrator believes, therefore, that the major thrust of the argument in the Union brief is misdirected. It is aimed at the possibility that the Employer would recall individuals who formerly were part-time employees before recalling individuals who formerly were full-time employees. Since both the Union and the Employer proposal provide for recall in inverse order of dismissal and since both call for the dismissal of all part-timers before any full-timers, the Union has not supplied reasons why its proposal should be chosen by the arbitrator in preference to the proposal of the Employer.

Since no persuasive reason has been put forth by the Union to change the present situation in which, in the absence of contract language to the contrary, the lay-off and re-employment procedures are governed by Section 62.13(5m), the arbitrator believes that it is proper for him to select the final offer of the Employer. Before doing so, however, he believes he should state explicitly that his choice does not in his opinion resolve the underlying dispute.

Essentially the Employer is claiming that adoption of the Union offer would lock the city into 15 full-time firefighter positions regardless of its needs, and that adoption of the Employer proposal does not do so. The arbitrator does not know if this is correct and wishes to emphasize that his selection of one offer over the other does not carry the implication that the Employer is or is not locked into some fixed position under either proposal.

No evidence supporting the right of the Employer to transfer full-time firefighters to other full-time or part-time city positions within or outside of the fire department has been presented by either party. Nor has argument about this question been advanced. By implication, however, the parties seem to believe that the arbitrator's choice of lay-off and recall procedures has a bearing on this question. Therefore, the arbitrator wishes to stress that his selection of the Employer offer does not in any way interpret either the Agreement or Section 62.13(5m) of Wisconsin Statutes except for his finding that Section 62.13(5m) requires that re-employment shall be in inverse order of dismissal and that part-time employees covered by 62.13(5m) must be dismissed prior to the dismissal of full-time employees.

FINDING AND AWARD

For the reasons explained in the discussion section of this arbitration award, and with full consideration of the evidence and arguments of the parties, and with due regard for the criteria set forth in 111.77(6) of the Wisconsin Statutes, the arbitrator finds that the Employer offer is preferable and hereby selects the final offer of the Employer and orders that it be incorporated into the 1977 Agreement.

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

6/15/77

June 15, 1977