

OCT 31 1978

BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

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In the Matter of the Arbitration  
of a Dispute between

CITY OF DEPERE

and

DEPERE PROFESSIONAL FIREFIGHTERS  
ASSOCIATION  
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Decision No. 16014-A

Appearances:

Condon & Hanaway, Attorneys at Law, by Mr. Donald J. Hanaway,  
for the City.

Parins & McKay, Attorneys at Law, by Mr. Thomas J. Parins, for  
the Association.

ARBITRATION AWARD

The Wisconsin Employment Relations Commission, by an Order issued on January 20, 1978, (Dec. No. 16014-A) appointed the undersigned Arbitrator, pursuant to Section 111.77, Wis. Stats., to select the final offer of one of the above-captioned parties and issue an award incorporating same. Hearing was conducted in DePere, Wisconsin on March 27, 1978. No transcript was made of said hearing. The exchange of briefs took place on July 5, 1978, but further arguments were submitted by correspondence through July 29, 1978.

This case covers a bargaining unit consisting of firefighting personnel employed by the City; comprised of approximately 25 positions. The impasse at hand arises out of the parties' collective bargaining for an agreement for calendar year 1978.

In pertinent parts, the parties' final offers were as follows:

Association Final Offer

(1) Wages

	Min.	1/2 yr.	1 1/2 yr.	2 1/2 yr.	3 1/2 yr.
Firefighter	\$931	\$999	\$1,069	\$1,114	\$1,159
Fire Mechanic					1,196
Fire Investigator					1,196
Lieutenant					1,274
Captain					1,349

(2) Retirement

"That the City contribute a maximum of \$95 toward the employee's share of the Wisconsin Retirement Fund."

(3) Holiday Pay 1/

"That each member receive 40% of his monthly salary as Holiday pay. Such amount to be divided by the number of Holidays granted to arrive at his per Holiday rate."

1/ Both final offers included an additional holiday: Labor Day.

(4) Vacations

"That the Vacation schedule be amended to provide for 12 working days after 18 years of employment for shift personnel."

(5) Sick Leave

"That each member be paid 1/4 of any accumulated and unused sick leave upon normal or disability retirement as defined by Chapter 41, Wis. Stats."

City Final Offer

(1) Wages

"\$80.00 a month increase for all classification."

(2) Retirement

"City to contribute up to a maximum of \$80.00 toward the employees' contribution or share of the Wisconsin Retirement Fund."

(3) Holiday Pay

". . . maximum of 4 holidays can be taken on a compensatory time-off basis, when earned; employee to be compensated at the rate of \$50.00 per holiday not taken on a compensatory time-off basis.

(4) Medical & Hospitalization Insurance

"City to pay 100% of premium for single plan."

In their briefs the parties advised the Arbitrator that an issue over sick leave language had been settled by mutual agreement subsequent to the arbitration hearing. Both parties would maintain 1977 contract provisions without modification where they have proposed no changes. The relevant portions of that agreement are as follows:

- (1) Wages (The figures in parentheses indicate the increase amounts proposed by the Association. The City proposed an \$80.00 increase at all points.)

	Min.	1/2 yr.	1 1/2 yr.	2 1/2 yr.	3 1/2 yr.
Firefighter	\$931 (0)	\$962 (37)	\$995 (40)	\$1,029 (85)	\$1,064 (95)
Fire Mechanic					1,101 (95)
Fire Inspector					1,101 (95)
Lieutenant					1,179 (95)
Captain					1,254 (95)

(2) Retirement

"The City . . . will pay up to a maximum of Seventy-Five (\$75.00) Dollars per month of the employee's contribution to the Wisconsin Retirement Fund."

(The Association offer would raise this to \$95.00, whereas the City offer would raise it to \$80.00).

(3) Holiday Pay

"Employees shall receive compensatory time off at the rate of twenty-four (24) hours, or be compensated at the rate of forty-five (\$45.00) dollars per day for holidays earned."

(Thus, the parties have agreed to eight paid holidays for 1978; but the City would limit compensatory time to 4 holidays, and raise the \$45.00 per day compensation to \$50.00; whereas the Association would not modify the compensatory time provision, and would calculate holiday compensation according to salary.)

(4) Vacations

"Line Personnel

- |     |           |                            |                     |
|-----|-----------|----------------------------|---------------------|
| (A) | Three (3) | working days after one (1) | year of employment. |
| (B) | (6)       |                            | (2)                 |
| (C) | (9)       |                            | (8)                 |
| (D) | (12)      |                            | (20)                |

. . .

Day Personnel

- |     |           |                         |                     |
|-----|-----------|-------------------------|---------------------|
| (A) | One (1)   | work week after one (1) | year of employment. |
| (B) | Two (2)   |                         | (2)                 |
| (C) | Three (3) |                         | (8)                 |
| (D) | Four (4)  |                         | (18) "              |

(The "shift personnel" referred to in the Association's offer are the "Line Personnel." "Day Personnel" work eight hours per day, five days per week. The Association would modify the 12 working day entitlement for line personnel from 20 to 18 years of service. The City would maintain the above-quoted provisions.)

(5) Medical & Hospitalization Insurance

"The City shall pay ninety (90%) percent of the monthly premium cost for individual and for family coverage."

(Thus, the City would increase its contribution to the individual premium from 90 percent to 100 percent; whereas the Association proposes to maintain the 1977 level.)

(6) Sick Leave

The 1977 contract included no provision for any pay-off of accumulated sick leave. (Thus, the Association's proposal would initiate such a benefit.)

During the hearing in this matter, which was in session for nearly twelve hours, the parties were "on the record" for approximately seven hours. Twelve different witnesses were called and recalled, examined and cross-examined. Thirty-nine exhibits, some of which are rather comprehensive, were received. The parties' briefs and reply briefs totalled over one hundred pages, and were supplemented by subsequent correspondence and attached exhibits. The undersigned has studied and restudied this evidence and argument to the point of producing unfortunate delay in the issuance of this award. However, this record cannot be summarized herein with appropriate conciseness, and no

attempt is made herein to do so. 2/ Rather the Arbitrator has, in the preparation of this Award document, concentrated upon the transcendent issue herein, i.e., comparison with Green Bay, recognizing that the statutes which authorize this proceeding provide "package" final-offer arbitration whereby a special strength or weakness in a particular aspect of a party's entire position may, in effect, determine the decision upon all aspects of the two final offers in issue.

The hearing in this matter was almost entirely devoted to the parties' dispute over whether the City should be compared to its larger nearby neighbor, Green Bay. The Association, contrary to the City, contends that in recent years the City has indicated an intention to accept such comparison, and thereby to attempt to minimize certain wage disparities between Green Bay and DePere employees. The Arbitrator has inferred from this emphasis that it is of paramount importance to the parties, as each views their present and future relations.

Much of the testimony adduced by both parties in this respect was inconsistent and vague; indicating fading memories, honest but differing perceptions of past discussions, and the rather complicated nature of the matter. The Arbitrator has not recounted herein the varying versions provided in order to avoid implications of criticism of those whose recollections are not credited. Rather, the following represents the findings of the undersigned as to the facts in question.

During the pertinent years the DePere Professional Firefighters Association and the DePere Police Benevolent Association, which represents a bargaining unit comprised of police personnel employed by the City, have both been represented in collective bargaining by Attorney Thomas J. Parins. To accommodate all concerned, these labor organizations and the City have negotiated substantially simultaneously. The City has been represented by counsel, the City Administrator, the Mayor, and the members of the City Council Finance Committee.

In the negotiations for 1976 collective bargaining agreements, Mr. Parins proposed an agreement whereby police and firefighting personnel employed by the City would "catch-up" with their Green Bay and Brown County counterparts over a three-year period. This would be accomplished by ordinary wage increases plus additional increases to overcome the substantial disparities between the DePere and Green Bay and Brown County personnel. The City's Attorney and Administrator discussed this proposal with Parins and prepared a draft of a provision for a five-year plan to overcome such disparities. However, at a January 12, 1976 Finance Committee meeting where said City officials presented their draft, it was unanimously rejected.

By mid-April, 1976, the parties still had not reached 1976 agreements and a Wisconsin Employment Relations Commission mediator entered the negotiations. The City continued to reject the labor organizations' proposals for a "catch-up" agreement, and the mediator apparently persuaded the employee organizations that, whereas the Finance Committee members would not agree to bind future Finance Committees, a non-contractual letter of intent to minimize the disparities in issue might be obtained from the Mayor, who also serves as the Committee's chairman. The organizations accepted this arrangement and a letter dated April 14, 1976 was drafted, with wording chosen by the mediator, and signed by the Mayor. That letter stated, in material part as follows:

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2/ It might be noted that the Association's summary of its own position in its initial brief required six legal-sized pages.

"During the past two years in Labor Negotiations, the City has recognized that the compensation paid the employees of the Emergency Services Departments of the City is somewhat below that granted some other employees in the County with substantially the same training and job requirements. To minimize the compensation differential, I submit to you the following offer for increased wages and benefits for the year 1976.

. . .

I am hopeful that this proposal is acceptable to your Bargaining Unit. In future negotiations I will make every effort to continue to minimize this compensation differential as we have shown in this proposal."

The instant parties' eventual wage settlement for 1976 was a \$91.00 per month increase, \$20 of which was termed "catch up."

As stated, the 1976 Finance Committee members, other than the Mayor, could not be persuaded to enter any writing respecting such disparities. They were opposed to doing so on a number of grounds, including reluctance to bind their future counterparts. However, according to their testimony herein, at least two of them left the meeting with the understanding that there were such disparities, and that in years to come reasonable efforts should be made to overcome them. They did not understand, however, that they had agreed to any particular method or timetable for doing so, or that they had compromised their statutory collective bargaining rights, or that any strict parity agreement had been reached. Rather, they believed that their future efforts toward approximate parity would be affected by the City's fiscal abilities and whether or not Green Bay wage rates were reasonable by conventional standards.

These understandings varied in degree from that of the Mayor, who was willing to indicate a commitment to approximate parity in the "shortest period of time possible," given prudent fiscal policies.

In the Arbitrator's judgment it was reasonable for the organization representatives present at this mediation meeting to conclude, based upon the expressions of the City representatives, that the City was aware of the disparities under discussion, and shared the belief that they should be minimized. The City's representatives had indicated that the comparisons to Green Bay emphasized by the organizations were not only appropriate but would operate in the future as wage levels were determined.

When the same parties settled their 1977 collective bargaining agreements, the Mayor stated at the final negotiations meeting that the City construed the wage settlement as providing some further narrowing of the aforesaid disparities, and that he hoped that the 1978 settlement would minimize the gap. He expressly reiterated his commitment to work toward approximate parity; and no City official in attendance, including Finance Committee members, dissented.

Thus, in the Arbitrator's view, the parties have developed an informal, non-contractual and fairly vague commitment to work toward approximate parity at a reasonable and prudent rate. This consensual arrangement is neither legally binding nor precise in its terms. However, it should be regarded as compelling, in the Arbitrator's judgment.

The statute by which this arbitration is authorized, provides criteria to be applied by arbitrators. Among them, at Section 111.77(6)(h), is "such other factors. . . which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining. . ." Such non-binding and imprecise, but

mutual, understandings as the one found herein do operate to determine wages in voluntary collective bargaining. Deviations from such shared intentions are inflammatory and run contrary to strong and productive employment relations, and are recognized as having such effects. Wage determination is normally a matter of applying, more or less, certain conventional comparisons; and when such conventions are mutually identified they are valued components of the bargaining process not to be unilaterally disregarded without negative consequences.

If the Arbitrator failed or refused to respect and effectuate this understanding, the City would be allowed to escape from its commitment without making any negotiated trade for that release. Such a result, so unlikely in "voluntary collective bargaining," is to be avoided in arbitration, unless arbitration is to become a substitute for collective bargaining, rather than a method for resolving deadlocks.

Since the Association's salary offer more closely adheres to the concept of catch-up with Green Bay, it must be accepted, providing other factors in the Association's entire offer do not require its rejection. In the Arbitrator's judgment nothing at stake among the remaining issues is of greater materiality than this salary issue; and furthermore, the Association's positions on the other provisions in issue are reasonable.

Indeed, the concept of catching-up with Green Bay wage rates is reasonable in that DePere and Green Bay exist within a single metropolitan area and share labor and other economic markets. The record discloses that both cities also share certain characteristics of urban and industrial communities which bear upon the tasks and responsibilities of firefighters. Their populations differ quite significantly, but such factors as the presence of dangerous substances, railroads, multi-story dwellings, and older commercial districts determine a fire department's responsibilities more than does population. Therefore, the aforesaid agreement to seek approximate parity is acceptable on its merits, as well as on the ground that the parties have accepted it.

In concluding that the Association's other positions are sufficiently reasonable, the following have been noted, among other things. The City has not placed emphasis upon its fiscal ability to implement the Association's offer. In fact, when the costs of the two offers are compared in terms of non-speculative 1978 costs to the City the difference is considerably less than \$10,000. The Association's offer on the retirement benefit approximates the counterpart benefits already extended to other City employees both in benefits received and cost incurred, when the exemption of firefighters from social security is taken into account.

The Association's holiday pay proposal is designed to provide holiday pay that correlates to regular daily earnings, rather than a flat amount received by all ranks and experience levels. This is conventional in general, and among DePere employees in particular. On the other hand, there is no evidence of any particular operational problem or expense arising out of the compensatory time-off provisions that the Association would maintain, and the availability of such time-off should reduce the amount of holiday pay incurred.

The Association's position on vacations would require nothing during the term of the contract in issue, and appears reasonable as it seems to bring the unit's vacation entitlement in line with that of other City employees. That is, the other employees receive one,

two and three weeks of vacation after one, two and eight years of experience, and the firefighters are similarly entitled, given that they work weeks comprised of three 24-hour days. Only the four-week, 12 working-day entitlements do not correspond under the 1977 agreements. The Association's offer would correct this single departure from uniformity.

The Association's sick leave pay-off proposal represents a conventional method of encouraging employees to value, and not to abusively overuse, sick leave. There is some evidence of such abuses in this record, but it is rather inspecific. There is no sound basis for attaching any specific cost to this proposal, especially because one cannot predict the relevant retirements, the sick leave accumulations of future retirees, or the savings afforded by avoidance of abuses. This proposal is the only element of the Association's offer that admittedly departs from benefits already enjoyed by other City employees, but it is in effect elsewhere in the relevant geographical area.

Finally, whereas it is concluded that the proposals that comprise the Association's offer are reasonable by comparisons with the benefits extended to other employees of the City and to the employees of other relevant municipalities; as well as in consideration of the City's fiscal abilities, and the increases in the cost of living disclosed in the instant record; it is not found that the City's proposals are indefensible. The City has put forth certain arguable comparisons to similarly situated employees, urged restraint respecting additional costs to the taxpayers, and contended that increases of the cost of living have been responsibly met in the past and by its present offer. As stated above, however, the Arbitrator does not find the City's contentions sufficient to overcome its historical commitment to closing the DePere-Green Bay salary gap, and finds that there are no defects in the Association's position great enough to obviate honoring that commitment.

AWARD

On the basis of the foregoing, and the record as a whole, the undersigned Arbitrator selects the final offer of the Association.

Dated at Madison, Wisconsin this 30<sup>th</sup> day of October, 1978.

By Howard S. Bellman  
Howard S. Bellman, Arbitrator