

BEFORE THE ARBITRATOR

FEB 6 1979

In the Matter of the Arbitration
of an Impasse Between

THE CITY OF MANITOWOC

and

FIREFIGHTERS LOCAL 368, INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS

Decision No. 16301-A

Appearances:

Mr. Patrick L. Willis, City Attorney, for the City.

Mr. Leroy H. Waite, State Representative, for the Union.

ARBITRATION AWARD

On May 3, 1978, the Wisconsin Employment Relations Commission (WERC) issued an "Order Appointing Arbitrator" in this matter (Case XXX, No. 22485, MIA-360, Decision No. 16301-A) specifying the undersigned, pursuant to Section 111.77, Wisconsin Statutes. Under subsection (4)(b) the Arbitrator must "select the final offer of one of the parties and shall issue an award incorporating that offer without modification."

A hearing was held in Manitowoc, Wisconsin on August 23, 1978. No transcript was made. Post-hearing submissions ended on approximately September 20, 1978.

The bargaining unit consists of firefighting personnel employed by the City. At the time of the instant hearing there were nine Captains, nine Lieutenants, fifteen Motor Pump Operators, and twenty-one Firefighters.

THE FINAL OFFERS:

At the hearing, despite some contrary implications of the final offer documents transmitted to the Arbitrator by the WERC, the parties agreed that the items in dispute herein are limited to dental insurance, health insurance for retirees, and promotional procedures.

Respecting dental insurance the Union proposes: "Effective July 1, 1978, the Employer shall pay up to \$8.00 per month per employee toward a single or family dental insurance plan. Such plan shall be a 'non-deductible' plan." It further proposes that effective January 1, 1979 the foregoing amount of \$8.00 should be increased to \$16.00.

The City's offer is as follows. "In addition to wages, the City agrees to contribute up to \$10.00 per month per employee toward the single or family dental insurance premium effective July 1, 1978."

Also, effective January 1, 1979, the Union proposes adding the following provisions to the parties' "Insurance and Pension" article, with the City paying 50 percent of the premiums.

(E) Retirees - Any participating employee of the Group Hospital, Surgical, Major Medical may elect to

continue to be covered as part of the Group under the rules of the plan until reaching the age of 65. This benefit is designed to provide coverage for employees forced to retire under disability provisions of Chapter 62.13 and the Wisconsin Retirement Fund, as well as participating employees with a mandatory retirement age less than 65.

The provisions of Article XVI (A) shall apply to such retired employees. However, an employee forfeits and waives all benefits under this provision if he becomes covered by any other group health insurance plan. Coverage under this plan will cease when the employee reaches the age of 65. After an employee reaches the age of 65, said employee may elect to stay in the group insurance but the full cost of the premiums must be paid by the employee.

Any retired Fire Fighter who has become eligible for other hospital, surgical, major medical insurance and loses that eligibility, shall, upon written request to the City, be reinstated in the city's hospital, surgical, major medical insurance plan under the provisions of Article XVI (A) without a physical examination or waiting period.

- (F) Dependent Survivors - In the event that an active or retired Fire Fighter dies leaving dependent survivors, those survivors shall be entitled to Health Insurance under the provisions of Article XVI (A) until such time as single dependents exceed the age for dependent coverage under the terms of the City's Health Insurance policy or until the widow of the deceased Fire Fighter shall remarry, obtain other Health Insurance coverage, or reach the age of 65.

The City proposes: "Employees shall have the right to elect to have the City retain accumulated sick leave credits upon retirement and have the City apply the retained funds to monthly hospitalization insurance premiums until such accumulated sick leave credits are exhausted."

The Union would continue the parties' contractual promotional procedures. The City would add the following. "In filling new or vacant positions, consideration shall be given to the applicant's qualifications, including performance record, prior conduct, seniority, and where practicable, to the results of competitive examinations supplied by the State of Wisconsin Bureau of Personnel."

This is proposed by the City as an amendment to Article VI (A). That Article at (A) and (B) provided as follows:

Article VI - Promotions and Transfers

- (A) When a job within the Department is vacated or newly created, employees are assigned to the jobs on the basis of department seniority providing they have the necessary qualifications and ability, as approved by the Police and Fire Commission: said employee shall serve a probationary period of three (3) months and shall be paid at the rate of pay designated for the job. In case of a fire fighter clerk, lieutenant and captain, a step in

pay shall take effect six (6) months from the date of promotion and said step shall be effective retroactively to the date of said promotion.

- (B) Permanent promotions will be made on the basis of Department seniority providing the employees meet the standards determined by the Chief for qualifications and ability.

DISCUSSION:

The parties' offers of dental insurance would initiate that benefit for this bargaining unit. The differences between their offers are that, whereas the City would make a \$10.00 contribution to the premium throughout the term of the agreement, the Union proposes an \$8.00 employer-contribution effective July 1, 1978, and a \$16.00 employer-contribution effective January 1, 1979.

The Arbitrator would compare this bargaining unit with its counterparts in the Cities of Sheboygan, Menasha, Neenah, Green Bay, Two Rivers, Appleton, Fond du Lac, Oshkosh, Kaukauna, and De Pere. All are in the same geographical region, and are unionized. Manitowoc is middle-sized among these cities. Its population is approximately 33,225. Green Bay is the largest of these cities at 90,796. Kaukauna is smallest at 11,430. Among these cities, four have such dental insurance and six do not.

Among the represented units employed by the City, only the Public Works unit, represented by a Teamsters Local has dental insurance. It achieved this benefit in the current round of negotiations, and the City has agreed to contribute \$8.00, then \$16.00. However, that unit settled for a lower wage increase percentage than the instant unit.

Turning for comparisons to the private sector, the record establishes that there are a substantial number of such plans in the Manitowoc metropolitan area. However, apparently a very large percentage of private sector workers do not receive this benefit. None of the represented employees of Manitowoc County have this insurance.

Of the aforesaid comparable cities, only three provide retiree health insurance benefits of the sort sought by the Union herein. Whereas the Union's offer proposes a 50 percent employer-contribution to the premium, the three cities that provide such insurance contribute 95 percent, 50 percent of the premium at the time of retirement and 100 percent of the premium at the time of retirement. Further, the Union's proposal includes at least two features, the right to re-enter the group without carrier approval after a period outside the group, and dependent survivor coverage, which while not unique are not standard.

It is also relevant and material that among the comparable cities, Manitowoc offers the most generous sick leave pay-out benefit to those who retire with accumulated sick leave. Of the three cities that provide retiree health insurance, two have no such pay-out and one has a relatively low severance-type payment. Such pay-outs are conventionally viewed as providing opportunities for the funding of continuing health insurance, much as the City's offer provides. The parties' agreement allows retirees to participate in the same group and plan as the active employees, or to take the sick leave pay out in cash.

In the Manitowoc private sector, among the largest employers, a few provide employer-funded retiree health insurance; but only one of these grants any sick leave pay-out. No other represented City unit has this benefit, nor does any represented Manitowoc County unit. None of the comparable cities provide both dental insurance and retiree health insurance.

The Arbitrator has considered the evidence respecting the peculiar health hazards and physical dangers of employment as a firefighter. It is reasonable to urge that corresponding benefits should be provided. However, the Association's instant insurance demands, in the view of the undersigned, seem excessive. Taken together, they would place the City in the position of providing extraordinary benefits when compared to other firefighter units, other City and County units, and local private sector units. Such a position of leadership is not traditional, nor should it be achieved through arbitration, in the Arbitrator's judgment. The level of insurance benefits offered by the City herein is, indeed, considerably above the norm; and in the case of dental insurance, must be viewed as a reasonable initial program. It is also important to recognize that the agreed-upon items of the collective bargaining agreement in issue, such as salaries, do not suffer from appropriate comparisons; but maintain these employees around the norm and in traditional relationships to other City workers.

On the other hand, the Arbitrator has considerable difficulty sustaining the City's offer on promotional procedures. Over the years the unit members have enjoyed provisions which entitle the most senior qualified applicant to fill a vacancy. Whereas the parties now agree that, in determining which applicants were "qualified," written tests could have been properly administered at the time of selection, this has not been done.

The City would down-grade seniority to the status of one of several criteria to be applied in selecting among applicants. In general, the undersigned would reject employer attempts to replace long-standing provisions of this nature through arbitration, even where they appear to be comparatively liberal, at least unless there is evidence of a corresponding increase in some other right or benefit. There is no such evidence herein.

The Arbitrator understands that the City's procedure, if fairly and systematically administered, provides the employer with an opportunity to promote the most qualified applicant. If the provision is implemented arbitrarily or discriminatorily, the City's discretion will be abused and subject to the grievance procedure. This procedure allows the City to select applicants whose qualifications have been enhanced by formal education for which the City compensates them. Further, although it is difficult to determine from contract provisions and management statements of practice exactly how such procedures are administered in the comparable cities, it appears that many of those cities' procedures resemble the City's offer.

However, as the Union emphasizes, the promotional procedure offered by the City would create a glaring ambiguity by its failure to delete (B) of Article VI; and the City's proposal does nothing in lieu of Section (A)'s references to probation and step increases.

The Arbitrator is presented in this case with a choice between undesirable alternatives and required to select one of them. Because future collective bargaining or arbitration may be more likely to

correct the distortion resulting from selecting the Union's offer, the following award is made.

AWARD

On the basis of the foregoing, the record as a whole, and the application of the factors provided Section 111.77(6), Wisconsin Statutes, the undersigned Arbitrator selects the final offer of Firefighters Local 368, International Association of Firefighters.

Dated at Madison, Wisconsin this 7th day of February, 1979.

By Howard S. Bellman
Howard S. Bellman, Arbitrator