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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

ARBITRATION OPINION AND AWARD

In the Matter of Arbitration

Between

VILLAGE OF WHITEFISH BAY

And

WHITEFISH BAY FIREFIGHTERS ASSOCIATION, LOCAL #819, I.A.F.F.

Case XXV
No. 24393
MIA - 432
Decision No. 17256-A

Impartial Arbitrator

William W. Petrie
1214 Kirkwood Drive
Waterford, Wisconsin 53185

Hearing Held

February 20, 1980
Whitefish Bay Village Hall
Whitefish Bay, Wisconsin

Appearances

For the Village

HAYES AND HAYES
By Tom E. Hayes
161 West Wisconsin Avenue
Milwaukee, Wisconsin 53202

For the Association

BRENDEL, FLANAGAN, SENDIK & FAHL
By John ,. Brendel
6324 West North Avenue
Wauwautosa, Wisconsin 53213

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Village of Whitefish Bay and the Whitefish Bay Firefighters Association, Local #819, I.A.F.F.

The expired labor agreement between the Employer and the Association was effective during calendar years 1977 and 1978. During the course of negotiations relative to a renewal contract, the parties were able to reach agreement on all matters except the following impasse items:

(1) The yearly clothing allowance for firefighters, and the bed linen laundering policy for on-duty personnel;

(2) The pay policy covering members of the bargaining unit during those time periods when they are temporarily assigned to higher ranking work;

(3) The appropriate promotion policy covering bargaining unit employees;

(4) Certain language considerations in connection with grievances and arbitration;

(5) The appropriate pay rate for those assigned to rescue squad responsibilities;

(6) Employee contribution for Hospital and Surgical Care Insurance premiums; Employer contribution for Hospital and Surgical Care Insurance premiums for future retirees;

(7) The payment of straight time or overtime for training time;

(8) Employee contribution for the cost of life insurance premiums;

(9) Language covering the expiration and renewal of future labor contracts.

The Negotiations Impasse

After preliminary negotiations between the parties had failed to result in a negotiated settlement, the Association on April 2, 1979, filed a petition with the Wisconsin Employment Relations Commission requesting final and binding arbitration of the matter pursuant to Section 111.77 of the Municipal Employment Relations Act. Investigator Stephen Pieroni thereafter met with the parties, and unsuccessfully attempted to mediate the dispute; in an Advice to Commission dated August 23, 1979, he certified the existence of an

impasse within the meaning of the Act, and recommended the issuance of an order requiring arbitration of the matter.

On September 7, 1979, the Commission issued findings of fact, conclusions of law, certification of the results of Mr. Pieroni's investigation, and an order requiring arbitration of the dispute. On October 16, 1979, the Commission issued an order appointing the undersigned to hear and decide the matter.

On February 20, 1980, a hearing was held at the Whitefish Bay Village Hall, at which time both parties received a full opportunity to present evidence and argument in support of their respective positions. Pursuant to the arrangements made at the hearing, the Employer reserved the right to file a post hearing brief, while the Association reserved the right to file a reply brief thereafter. The Employer's brief was dated March 5, 1980, and the Union's response was submitted on March 31, 1980. The record was closed by the Arbitrator on April 3, 1980.

The Statutory Framework for the Proceeding

The dispute is governed by the provisions of Section 111.77 of the Wisconsin Statutes which provide in pertinent part as follows:

> "111.77 Settlement of disputes in collective bargaining units composed of law enforcement personnel and fire-fighters....
>
> * * * * * *
>
> (4) There shall be 2 alternative forms of arbitration:
>
> (a) Form 1. The arbitrator shall have the power to determine all issues in dispute involving wages, hours and conditions of employment.
>
> (b) Form 2. The commission shall appoint an investigator to determine the nature of the impasse. The commission's investigator shall advise the commission in writing, transmitting copies of such advice to the parties of each issue which is known to be in dispute. Such advice shall also set forth the final offer of each party as it is known to the investigator at the time that the investigation is closed. Neither party may amend its final offer thereafter, except with the written agreement of the other party. The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

(5) The proceedings shall be pursuant to Form 2 unless the parties shall agree prior to the hearing that Form 1 shall control.

(6) In reaching a decision the arbitrator shall give weight to the following factors:

(a) The lawful authority of the employer.

(b) The stipulations of the parties.

(c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.

(d) Comparison of the wages, hours and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally:

(1) In public employment in comparable communities.

(2) In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

ISSUES

In light of the fact that there was no agreement of the parties to the contrary, these impasse arbitration proceedings are governed by form 2 as described above, in Section 111.77(4)(b) of the Wisconsin Statutes. Accordingly, the authority of the Arbitrator is limited to the selection of the final offer of one of the parties,

and the issuance of an award incorporating that offer without modification. In determining which of the offers to select, the Arbitrator is governed by the statutory criteria referenced in Section 111.77(6), sub-sections (a) through (h) of the Wisconsin Statutes.

THE FINAL OFFER OF THE EMPLOYER

The final offer of the Village of Whitefish Bay relative to the various impasse offers consisted of the following:

(1) That the yearly clothing allowance be $145.00 per year after two years of employment, and free replacement of damaged clothing; further that bed linens be laundered twice per month;

(2) That employees receive a daily allowance of $4.00 for temporary assignment to higher ranking work when the assignment continues for more than eight hours;

(3) That the Employer retain the right to select from among the three highest scoring employees in the various promotion examinations;

(4) That the grievance and the arbitration procedures be limited to matters involving alleged violation of specific provisions of the collective agreement, and that any arbitrator be precluded from modifying either the labor agreement, various rules, and/or any ordinances;

(5) That no additional pay be provided for working on the Rescue Squad;

(6) That Employees continue to contribute $3.00 per month toward the purchase of insurance covering hospital and surgical care; that all hospital and surgical care for retirees be paid for at the expense of the insured;

(7) That employees be compensated for required training time at the rate of straight time;

(8) That the forthcoming agreement expire, without automatic renewal, at the end of the two year term, following appropriate notification;

(9) That the Employer continue its prior practice of paying 50% of the cost of any life insurance elected by employees pursuant to the labor agreement.

THE FINAL OFFER OF THE ASSOCIATION

The final offer of the Association relative to the various impasse items, consisted of the following:

(1) That all employees in the bargaining unit receive up to $150.00 per calendar year in uniform allowances, and that bed linens be laundered by the Employer;

(2) That employees temporarily assigned to higher ranking work receive a $5.00 daily allowance, when the assignment continues for 4 hours or more; that employees assigned to the Rescue Squad receive a $3.00 per day allowance;

(3) That future promotions be determined by the "rule of one", with the highest scoring qualified employee selected for appropriate promotions; that the point determinations include certain changes with respect to the consideration of seniority;

(4) That grievances that proceed through the contract grievance and arbitration procedure, need not be confined to alleged violations of specific provisions of the labor agreement;

(5) That firefighters assigned to the Rescue Unit receive a $3.00 daily premium for such assignment;

(6) That the Employer pay the full premium costs for Employee Hospital and Surgical Care Insurance, and for Employee Life Insurance;

(7) That the Employer pay 50% of the cost of Hospital and Surgical Care Insurance for future retirees;

(8) That Employees be compensated at time and one-half for required training time in excess of their normal working schedule;

(9) That the term of the forthcoming labor agreement be subject to automatic renewal for twelve month periods, unless the parties reach agreement on a new contract or impasse procedures are instituted in accordance with Section 111.77 of the Wisconsin Statutes.

THE POSITION OF THE EMPLOYER

In support of its contention that its final offer is the more appropriate of the two before the Arbitrator, the Employer offered several general and several specific arguments. Initially, it suggested that the overall approach of the Association was not soundly based, and additionally emphasized that its final offer was particularly indicated by the statutory criteria of the authority of the employer, the interest of the public, the financial ability of the employer, and the comparison factor.

In relating its arguments to the specific impasse items, the Employer emphasized the following:

(1) It raises the question of the legal authority of the Employer to agree to pay hospitalization and surgical care insurance premiums for future retirees; specifically, it speaks in terms of burdens on future tax payers for past services rendered, and the

propriety of a sitting Village Board committing unelected future Boards to pay for services rendered in the past.

(2) In connection with the interest of the public and ability to pay criteria, it cites the difficulties of current municipal finance; specifically it cites the State's elimination of income tax sharing between State and Municipality, the phasing out of the tax on commercial and industrial machinery and inventory, and the imposition of a tax levy limit. Citing specific evidence of declines in payments from the State, and declines in personal property tax revenues, it suggests that any offsetting increases in real property taxes are neither practical, politically feasible, nor equitable. It also suggests that the Employer has already made a substantial property tax commitment, and cites the lack of logic in equating increases in property tax values with ability to pay.

(3) In connection with the comparison criteria, the Employer emphasizes the argument that the Fire-fighters have no private sector counterpart, and that public sector comparisons are the most persuasive. In the latter context, it suggests the appropriate exclusion of Greenfield and Milwaukee, and offers distinguishing considerations with respect to other communities such as Wauwatosa due to population and area, and Cudahy, West Allis and West Milwaukee due to heavy industrialization. It suggests that the Association's comparisons are selectively rather than systematically presented, for the purpose of emphasizing the desired comparisons.

(4) In connection with the clothing and the bed linen impasses, it cites the reasonable change of bed linen after five uses, the logic of a waiting period for a clothing allowance after a new fireman is initially outfitted, and the argument that the original motivation for a clothing allowance (ie the dual uniform requirements of police and fire fighters) has largely disappeared.

(5) In connection with the impasse relative to pay policy for temporary assignment to higher ranking work, it suggests that comparisons do not support the position of the Association, also challenging the logic of a lump sum versus an incremental payment approach, and the obligation to pay on theoretical versus practical grounds.

(6) In approaching the promotion impasse, the Village cites the necessity of maintaining some latitude in making promotions, versus the inflexibility that would result from the Association's approach. It cites the necessity for the Chief to determine the necessary qualifications for a job opening, the need to select to meet required experience, knowledge or skill, and the fallibility of various testing procedures. It suggests that the comparison criteria does not support the position of the Association.

(7) With respect to the grievance procedure impasse, the Employer suggests that the addition of the words "..and other employment conditions.." to the description

of grievance opens the door to serious abuse; while such a procedure may well be common for handling of disputes through intermediate supervision, it suggests that allowing arbitrators to hear and decide disputes falling outside the contract would be highly unusual. It submits that the zipper clause and the grievance procedure in the recently expired agreement limited the authority of an arbitrator to consider extra contractual matters.

(8) In connection with the Rescue Squad pay dispute, the Village suggests that the matter should properly be considered to have been put to rest in past negotiations; it submits that special payment for rescue calls is inappropriate because such duties, rather than fire fighting, are really the normal duties for which an employee is presently paid.

(9) Despite the practice of other communities, it suggests that payment of the entire premium for hospitalization and surgical care for present employees is unsound; the present practice, it submits, mitigates toward self policing and lesser abuse, and is also consistent with the contribution requirement for other Village employees.

(10) Apart from the legal aspects relating to payment of medical premiums for future retirees, the Employer suggests that such a practice would be inappropriate because of the already substantial commitment to retirement benefits for fire fighters, and the accumulative nature of such a commitment. It also cites the lack of support for such a benefit in comparable communities.

(11) In connection with the training time dispute, the Village cites the argument that the practice is of benefit to both the employee and the employer, and that straight time should be sufficient. It suggests that while the comparison criterion shows time and one-half to be more common than straight time reimbursement, that it is by no means predominant.

(12) In connection with the language dispute with respect to termination and renewal of the agreement, the Employer suggests that the Union is attempting to deprive the Employer of the ability to declare negotiations at an impasse and/or to take other measures to produce an early agreement and resumption of a normal climate for negotiations. It suggests that the Union's proposal would be of significant advantage during a period of recession or deflation.

(13) In connection with the impasse over the payment of life insurance premiums for current employees, the Employer cites the practice of requiring contributions from other employees of the Village; while it concedes that a majority of other employers pay the entire premium, it cites the fact that there are exceptions other than the Village of Whitefish Bay.

In summary and in conclusion, the Employer urges that its current, significant level of fringe benefits is fairly comparable with those

granted in other communities in the Milwaukee metropolitan area. It cites a positive collective bargaining climate, favorable working conditions, and the current tax load on residents as additional factors favoring the Employer's final offer.

POSITION OF THE ASSOCIATION

In support of its contention that the final offer of the Association was the more appropriate of the two before the Impartial Arbitrator, the following principal arguments were offered.

(1) It suggested that the various insurance impasse items were the most important items in dispute.

(a) In connection with the proposed elimination of the $3.00 per month employee contribution for family health coverage, it cited the low cost of the demand to the Employer, the advantage to the employee of not paying the premium with after tax dollars, and the fact that most other private and public sector employers provide the benefit.

(b) In connection with the proposed elimination of employee contributions for life insurance, the same arguments were referenced as are summarized above; additionally, the Association emphasized the greater current impact of the employee contribution requirement upon older members of the bargaining unit, whose monthly contribution is larger than for their younger co-workers.

(c) The Association conceded that the request for the Village to provide 50% of the cost of medical insurance for future retirees was not as well established a benefit elsewhere, but urged that it was necessary because of inflation, and the limited skills of a firefighter retiree at age 55; in urging the reasonableness of the demand, it emphasized that the Village's obligation will cease when suitable reemployment is secured after retirement, or when a retiree becomes eligible for medicare.

(2) In connection with the acting pay dispute, it suggests the reasonableness of a $5.00 daily payment where higher level duties are assumed for a time period of 4 hours or more; it defends the proposal by citing the practices of comparable communities, and characterizes the Employer's offer as illusory in certain respects.

(3) In urging the adoption of its clothing allowance offer, the Association emphasizes the fact that the parties are only $5.00 apart, which will cost the Employer only a total of $80.00 per year for the entire bargaining unit. In support of its demand, it cites inflation since the $125.00 allowance was adopted in 1975, the allowances paid by comparable communities, and the fact that the parties are still on a voucher system

(rather than cash allowance) which requires approval, and which will not allow the replacement of a uniform which has not worn out.

(4) The Association characterizes the E.M.T. Squad Premium as the second most important issue to the membership, citing equities, comparable community practices and increased work load in support of the suggested $3.00 per day premium for those days when an E.M.T. actually works and uses his skills on a day when he is assigned to the rescue squad.

(5) In support of its promotion proposal, the Association cites the equity of seniority points being awarded to eligible applicants for promotion; elimination of the rule of three, it emphasizes, would still leave considerable promotional discretion to the Chief. It also cited certain other communities who follow procedures similar to that proposed by the Association

(6) It cites practices of other fire departments in support of its request for time and one-half for hours required in excess of the 56 hours per week currently scheduled.

(7) In urging arbitral adoption of its position in the grievance procedure dispute, the Association urges the appropriateness of expeditious handling of disputes that arise from the agreement or from work rules or other employment conditions. It cites the small grievance load in the past, and suggests that the Employer's position would actually diminish the ability to grieve that was provided in the old agreement. It also cites the practices of other communities.

(8) It characterizes the term of agreement language dispute as one of the less significant items, merely emphasizing the equity in its proposal and citing the practices of comparable communities.

In summary the Association emphasizes the importance of the insurance and the E.M.T. proposals in particular, citing its moderation in salary demands, having settled for 7% per year for the two year term of the forthcoming labor agreement.

FINDINGS AND CONCLUSIONS

The first observation that will be made by the Impartial Arbitrator is that both parties to the proceeding have done a highly professional job in presenting evidence and argument in support of their respective positions. Both parties introduced substantial numbers of exhibits in support of their cases, and both skillfully marshalled the evidence and argument for the

Arbitrator in their briefs. When the above factors are added to the fact that the positions of the parties are very close in several of the impasse areas, it is apparent that the decision in this matter will not be without difficulty.

Both parties addressed attention to certain general considerations which they felt tended to support their positions on an overall basis, and both submitted specific arguments which related to one or more of the specific impasse items.

On an overall basis, the Employer cited declining sources of revenue and an already substantial tax commitment by Village residents, in support of its final offer. It put the matter as follows in its post hearing brief: 1./

> "The dilemma of municipalities is well known. All are caught between escalating costs of which salaries for employees is the most important, on one hand, and in the other universal demand of property tax payers for relief on the other."

In specific terms, the Employer empahsized a substantial current tax commitment, which shows the Village ranked 6th of 30 comparable communities in terms of net tax rate per $1000 value of property for 1980 (Employer Exhibit #23), cited the increasing tax levies (Employer Exhibit #24), emphasized declining State and Federal revenue sharing (Employer Exhibit #26), and the reduction in personal property tax revenue (Employer Exhibit #27). It urged the conclusion that these factors strongly support the employer's final offer, pursuant to the application of the ability to pay and the interest of the public criteria.

While the above general factors must be given substantial consideration by the Arbitrator, they cannot alone be the decisive factors in the resolution of the dispute. While the Village wants to hold down taxes to the extent reasonably possible, a necessary balance must be struck in applying the interest of the public criteria between the need for services and the necessity for paying for them. The second of the two cited criteria, the ability to pay

factor, is typically introduced where there is a claimed inability to pay. No allegation of lack of ability to pay, in the traditional sense, was advanced in this proceeding; rather the observation was made and the argument advanced that further tax increases raise major political and social problems. As referenced by the Employer and quoted above, these arguments could persuasively be advanced on behalf of almost any municipality at the present time, and are not unique to Whitefish Bay.

The Association cited the moderate wage increase settlement of 7% per year for 1979 and 1980 as being well below the present and projected rate of increase in the consumer price index, in support of the need for offsetting increases as requested in its final offer (Association Exhibits #7, #8, #9, #10, #11). It also cited perceived declines in comparable earnings for members of the bargaining unit; specifically it referenced the collective bargaining history, wherein the Village was the top paying employer for firemen in fourteen comparable communities in 1969 (Association Exhibit #4), but had declined to the lowest of thirteen comparable communities by 1978 (Association Exhibit #6).

Despite the fact that wages have already been settled by the parties for the 1979-1980 agreement, historical comparisons and cost of living increases are two very significant arbitral criteria. Any relative declines in wages over the period of time cited would also relate to the application of the overall compensation criteria as described in the statutes. While each of the referenced criteria favor the position of the Association, and each must be considered by the Arbitrator in the resolution of this dispute, none is conclusive relative to which of the final offers is the more appropriate. Accordingly, it will be necessary to consider each of the impasse items separately, after which an overall consideration of the statutory criteria will indicate which of the final offers should appropriately be selected.

Prior to getting into the specifics of the various impasse items in detail, the Arbitrator will make one additional preliminary observation relative to arbitral criteria. Although there is no indication in Section 111.77(6) of the Wisconsin Statutes, that any of the criteria are more important than others, without any doubt, the comparison factor is the most relied upon criterion in resolving interest disputes. This point was well enunciated in the following extract from the authoritative book by Elkouri and Elkouri: 2./

> "Without question the most extensively used standard in 'interest' arbitration is 'prevailing practice'. This standard is applied, with varying degrees of emphasis, in most 'interest' cases. In a sense, when this standard is applied the result is that disputes indirectly adopt the end results of the successful collective bargaining of other parties similarly situated. The arbitrator is the agent through whom the outside bargain is indirectly adopted by the parties."

Irving Bernstein in his excellent book on wage arbitration makes the same points, and expands upon the rationale as follows: 3./

> "Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill. In the presence of internal factionalism or rival unionism, the power of comparison is enhanced. The employer is drawn to them because they assure him that competitors will not gain a wage-cost advantage and that he will be able to recruit in the local labor market. Small firms (and unions) profit administratively by accepting a ready-made solution; they avoid the expenditure of time and money needed for working one out themselves. Arbitrators benefit no less from comparisons. They have 'the appeal of precedent and...awards based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public'."

The parties to this dispute have relied heavily upon the comparison criterion in presenting their evidence and arguments relative to each of the impasse items, and this evidence has been very persuasive to the Arbitrator. The undersigned, and the vast majority of interest arbitrators, share the views of authorities

such as those cited above, relative to the importance of the comparison factor in interest disputes.

The Clothing Allowance Dispute

The five dollar per year difference between the parties relative to clothing allowance, leads the arbitrator to surmise that the matter could and should have been resolved in negotiations between the parties.

Fundamentally, there seems to be very little to recommend the Employer's versus the Association's final offer.

(1) Inflationary pressures since 1975 would seem to strongly indicate the justification for increasing the prior clothing allowance from $125.00 to $150.00;

(2) In looking to comparisons, the Association's proposal would place it approximately $35.00 per year below the average of comparable cities, and it would still rank tenth lowest of thirteen comparable cities; (Employer Exhibit #2 and Association Exhibit #39)

(3) The retention of the voucher system is in the distinct minority in comparable cities, and would afford the Chief substantial authority over the authorization of money to purchase replacement clothing. It would also mitigate against unnecessary purchases of replacement uniforms by new employees, until the uniforms actually required replacement. (Employer Exhibit #2).

The Village argues against the obligation to launder bedding more frequently than after five uses, and argues against the assumption of any obligation to launder any employee's outer garments. The Association's final offer makes no reference to the frequency of laundering bedding, and its brief emphasizes that this factor is left for Village discretion. Neither the Union's final offer nor its brief makes any reference to the laundering of employee's clothing by the Employer.

In summary, the Arbitrator finds the Association's clothing proposal the more appropriate of the two offers before him. The amount is substantially below comparable benefits elsewhere, the retention of the voucher system is in the distinct minority, and there is no actual dispute with respect to the laundering of bedding or employee clothing.

The Acting Pay Dispute

In support of its demand for acting pay of $5.00 per day during those situations where an employee is temporarily required to perform duties in a higher paying classification, the Association cited both equity and comparisons. It emphasized that the parties have agreed in principle that acting pay is appropriate, and urged the conclusion that its suggested daily premium was equitable, also suggesting that the Employer's proposal was illusory in many respects. In the latter connection it primarily emphasized the very small difference between the top of the Firefighter classification and the bottom of the Driver Classification which would narrow the amount of daily premium to be paid to an eligible Firefighter at the top of his pay range to approximately forty cents per day for filling in as a Driver. Similarly, the narrow difference between a top paid Driver and a Lieutenant would result in only an approximate fifty cents per day for a Driver acting as a Lieutenant.

While the comparison data which appears in Employer Exhibit #3 and in Association Exhibit #29 are not entirely clear with respect to practices elsewhere, the trend in comparable communities appears to favor the position of the Association. While there is some confusion between the two exhibits with respect to current practices in South Milwaukee and West Milwaukee, a solid majority of Employers pay some type of premium for temporarily acting in a higher rated job. The minimal payments in some cases, and the varied premiums that would apply to other individuals working out of classification under the Employer's proposal would also result in confusion and inequities.

On the basis of the comparison criterion and the equities, therefore, the Arbitrator is more strongly oriented toward the Association's rather than the Employer's final offer in connection with the acting pay dispute.

The Promotion Dispute

Stated simply, the Employer wants to retain substantial discretion in the selection of eligible employees for promotion by selecting any of the top three employees who score in excess of 70% on the appropriate promotional examination. The Association wants to introduce seniority points for those who score in excess of 70%, and to require the Employer to select the highest scoring employee for promotion to the higher paying position.

In connection with the promotion issue, the overwhelming majority of comparable employer's follow the practice of unilateral selection for promotion by an employer (Employer Exhibit #4 and Association Exhibit #48).

In support of its proposal, the Association references the substantial discretion that would be retained by the Chief in the selection of promotees, even under the Association's proposal. It also alleges that its proposal would lead to improved morale, to greater incentive to learn on the part of employees, and to a more realistic and equitable recognition of seniority in the promotion process.

Generally speaking, Arbitrators will require rather persuasive evidence to justify modifying a practice which has apparently been in effect without major problem in the past. While the Association's equitable arguments have potential merit, the current practice of the Employer is strongly supported by the comparisons with other comparable public sector employers.

On the basis of the record in this proceeding, particularly the application of the comparison criteria and in light of the absence of persuasive evidence of past problems with retention of the current system of promotion, the Impartial Arbitrator has reached the preliminary conclusion that the final offer of the Employer in the area of promotions is the more appropriate of the two proposals before him.

The Grievance Procedure Dispute

Both parties apparently have agreed that some revisions were in order, with respect to the parties' previous grievance procedure. The basic disagreement relative to the grievance procedure issue is in connection with what constitutes a "grievance". In addition to the definition of a grievance, the parties are in dispute with respect to the time frame for answering of grievances by management.

The Employer suggests that the consideration of "other employment conditions" would open the door to abuse of the grievance procedure, and would delegate to arbitrators the authority to consider and decide grievances not arising from the interpretation and application of the labor agreement. It also suggests that the seventy-two hour time frame for answering a grievance is not excessive, citing no indication that time is of the essence in most grievances, and suggesting that a more measured pace in considering grievances would be to the advantage of both parties.

The Association suggests that the Employer's definition of a grievance is unduly restrictive, and would be a departure from what constituted a grievance under the old agreement; it characterizes the matter as a minor dispute, citing the fact that few grievances have actually been filed in the past. It further suggests that the seventy-two duty hour response time provided in the current agreement translates into an eleven calendar day response time for a simple grievance; alternatively, it suggests that a three day time frame would be appropriate for the submission of management answers.

On an overall basis, the Employer suggests that comparisons with other comparable employers support its position in the grievance procedure dispute (Employer Exhibit #5). The Association submitted random excerpts from various agreements that would tend to support its proposal (Association Exhibits #50 and #51).

While the Arbitrator is not satisfied with the adequacy of the record before him relative to Grievance Procedure, the comparison

criterion in particular, clearly favors the position of the Employer. The following observation in the Employer's Brief is a good summary of the crux of the dispute: 4./

> "It is not uncommon for grievance procedures to permit broad latitude on complaints up through intermediate supervision. It is very uncommon for grievance procedures to permit Arbitrators to consider and decide on disputes outside of the contractual area."

Certainly the Employer's argument in the above respect is consistent with the thinking of this Arbitrator, in that, almost without exception, labor contracts limit arbitrators to interpretation and application of contract provisions, and preclude him from adding to, subtracting from, or otherwise modifying the specific terms of the agreement.

The time element dispute is perhaps not really a practical dispute, in that nothing in the contract requires the Employer to use the full seventy-two duty hours to respond. The Arbitrator can well conceive of situations where a relatively rapid response would be possible, while in other potential disputes a longer time frame would be necessary and desirable.

In considering the final grievance procedure offers of both parties, against the appropriate statutory criteria, the Arbitrator has concluded that the Employer's final offer is the more appropriate.

The Rescue Squad Pay Dispute

The licensing of Emergency Medical Technicians requires completing an 81 hour course of study and passing a written examination. Prior to 1975, members of the bargaining unit were not paid for completing the E.M.T. licensing requirements. During the 1975-1976 agreement, the parties agreed to the following provision referenced in Association Exhibit #45:

"SECTION XVII - EMT TRAINING

> "Any employee who has received a minimum of eighty hours of Emergency Medical Training at an accredited institution and has been certified as an emergency medical technician by such institution prior to January 1, 1975 shall, upon submission of appropriate proof thereof, be paid $30.00. .....Further payment therefore shall be considered by the parties if the certification heretofore

> received is recognized when qualifications are established for emergency medical technicians or, if it is not fully recognized, to the extent that credit for such certification is given when such qualifications for emergency medical technicians are established."

During the most recent labor agreement, employees have been allowed to take EMT training on Employer paid time, although no agreement was ever reached with respect to any additional pay premium based upon the performance of EMT duties.

The Association urges the conclusion that a $3.00 per day premium should be paid for employees who perform EMT duties. In support of its request, it alleges that the rescue squad entails much harder work, including four times as many runs per day as the fire service, greater requirements at night, a higher incidence of injury, and greater wear and tear on uniforms. In support of its position, it also emphasizes that if the Employer does not want to use the EMT skills of an employee or employees it need not assign these duties, in which case no premium would be required.

The Employer relies upon the fact that only one comparable community pays for EMT services with a daily premium along the lines requested by the Association. Additionally, it references the argument that the Association is merely attempting to re-open an old issue with respect to credit for prior, voluntary training, undertaken by employees in the past. In looking to the current work load of the Department, the Employer suggests that the EMT work is more typical than firefighting, suggesting that it is the rule rather than the exception and, as such, is not deserving of any special premium.

In looking to the record before him, the Impartial Arbitrator finds the Association's arguments relative to equity to be somewhat persuasive. Primarily in light, however, of the overwhelming practice in comparable communities, the final offer of the Employer is somewhat more appropriate than that of the Association.

The Insurance Premium Impasses

The major single factor that would favor the position of the Association with respect to the issue of employee contribution for hospitalization and surgical, and for life insurance, and the issue of employer contribution for retiree hospitalization and surgical insurance is the comparison criterion.

Even the exhibits submitted by the Employer would tend to strongly support the Association's insurance demands on the basis of comparisons! Employer Exhibit #8, for example, shows ten of fourteen comparable communities paying the entire cost of family insurance coverage, which is consistent with the thrust of Association Exhibit #17. Employer Exhibit #15 and Association Exhibit #19 show that the vast majority of comparable employers also pay 100% of the premium cost of employee life insurance. While some employers do not provide health insurance for retirees, Association Exhibit #21 and Employer Exhibit #11 show that a majority of comparable employers make some employer payment of at least a share of the cost of retiree insurance.

The Employer urged the conclusion that payment of at least a portion of the premium costs by an employee is helpful in inducing a feeling of participation, and in imposing some elements of self policing and reduction of abuses. In support of this argument, it introduced as Employer Exhibit #10, a copy of an article entitled "Consequences of Increased Third-Party Payments for Health Care Services" by Professor Robert Zelten. A review of the article by the Arbitrator fails to support the rationale for its introduction by the Employer. Professor Zelten discusses the undisputed fact that first dollar coverage in insurance plans and the lack of patient contribution for the costs of medical services tend to drive up the

cost of medical services. The article, however, refers to point of service contribution by the consumer, rather than to before the fact premium contributions. Hypothetically stated another way, if the consumer had to pay the first three dollars of cost at point of service, it could be persuasively argued that this would have an impact upon both the costs and the amount of medical services supplied; the same considerations do not apply, however, to a $3.00 per month premium charge to an employee for family medical coverage, as this fixed monthly charge is not directly related to either the demand for or the cost of medical services at the point of service.

In connection with the retiree insurance premium impasse, the Employer relied upon the argument that it lacked the lawful authority to grant the demand, within the meaning of Section 111.77 (6)(a) of the Wisconsin Statutes. In this connection, it references the fact that such premium payments by the Village would constitute a future payment for past services, and would entail burdening future trustees and taxpayers with costs for services rendered to past residents. In this connection it urged the Arbitrator to conclude that: 5./

> "...No municipality requires any more commitments in the future of unknown magnitude without any funding to meet the expense. These are the types of burdens which brought New York, Cleveland and Chicago to their knees."

While the Arbitrator must agree with the Employer that strong philosophical arguments could be advanced in support of the proposition that present services should not be paid for with IOUs that must be redeemed in the future, there is little persuasive argument that such a commitment would contravene the requirements of Section 111.77 (6)(a) of the Wisconsin Statutes. In this connection, it must be emphasized that no request is being advanced relative to already retired, former employees, but rather the request is that those present employees who retire in the future should be eligible for the Employer to pay 50% of the hospital and surgical insurance premiums for certain eligible individuals between the ages of fifty-five

and sixty-five. In short, it seems quite clear that the Employer has the legal authority to make such a commitment for future retirees.

Based upon all the above, the Impartial Arbitrator has reached the preliminary conclusion that the Association's final offer in the areas of employee hospitalization and surgical insurance, employee life insurance, and future retiree hospitalization and surgical insurance are strongly favored by the comparison criteria. No valid issue exists with respect to the Employer's lawful authority, and the remaining arbitral criteria argued by the parties simply do not persuasively support or detract from the insurance components of the Association's final offer.

The Overtime Pay Impasse

The primary dispute in the overtime pay area relates to the payment of employees for training time, which time is in excess of the fifty-six hours per week of scheduled straight time.

As was the case in connection with the insurance premium impasses, application of the comparison criterion strongly favors the position of the Association in these proceedings. Both Association Exhibit #29 and Employer Exhibit #13 demonstrate that a solid majority of comparable employers already pay premium time for required training at a time and one-half rather than a straight time rate of pay.

The Employer legitimately emphasizes that training activities benefit both the Employee and the Employer, also citing the fact that the Employer is willing to pay for required training on a straight time basis. The same argument is tacitly recognized in the Association's proposal that employees who are authorized but not required to attend training classes should be reimbursed at straight time, while those required by the Employer to attend would receive time and one-half.

The Arbitrator has reached the preliminary conclusion that the final overtime pay offer of the Association is strongly supported by the comparison criterion, and the remaining arbitral criteria do not strongly favor the position of either party.

The Contract Termination Language Dispute

The language dispute relative to termination versus automatic renewal of the labor agreement is based more on theoretical than upon practical grounds.

The Employer feels that if the agreement expires without renewal, both parties should be required to rely on the rights and duties imposed by law, without advantage to either side; fundamentally, however, it wants to retain the theoretical ability to make unilateral changes after the existence of a bargaining impasse.

The Association favors automatic renewal under the normal circumstances described in the final proposal, and obviously feels that the Employer should not have the ability to make unilateral changes following the expiration of a prior agreement.

While the record is far from comprehensive with respect to this impasse item, the comparison criteria clearly favors the position of the Association. Employer Exhibit #14 clearly shows that some form of automatic renewal exists in the vast majority of comparable communities, while Association Exhibit #23 shows three specific examples of such automatic renewal language. Apart from comparisons, the Arbitrator will merely observe that the entire thrust of Section 111.77 of the Wisconsin Statutes is toward the orderly resolution of contract negotiations impasses without precipitous, unilateral action by either side; this purpose would be much better served by the adoption of the Association's rather than the Employer's final offer with respect to contract renewal language.

Summary of Conclusions

Based upon the above discussion, the Arbitrator has reached the following summarized conclusions:

(1) The Employer's general arguments with respect to the ability to pay and the interest of the public criteria are not conclusive with respect to the resolution of the overall dispute between the parties;

(2) The Association's arguments relative to the moderate wage increases previously agreed upon, the cost of

living factor, the historical bargaining comparisons, and the overall level of compensation are not conclusive with respect to the resolution of of the overall dispute between the parties;

(3) The Arbitrator has determined that the evidence and arguments of the parties relative to the comparison criterion is the most persuasive factor bearing upon the resolution of the dispute before him;

(4) The Association's final offer relative to the clothing allowance impasse, is clearly the more appropriate of the two offers;

(5) The Association's final offer relative to the acting pay impasse is clearly the more appropriate of the two final offers;

(6) The Village's final offer relative to the promotion criterion impasse is the more appropriate of the two final offers;

(7) The Village's final offer relative to the grievance procedure impasse is the more appropriate of the two final offers;

(8) The Village's final offer relative to the EMT pay issue is somewhat more appropriate than that of the Association, although equity and bargaining history considerations favor the latter's position;

(9) The Association's final offer with respect to employee contribution for hospitalization and surgical, and for life insurance premiums costs is clearly the more appropriate of the two final offers; the Association's final offer with respect to Employer contribution for retiree hospitalization and surgical insurance premium contributions is clearly the more appropriate of the two final offers;

(10) The Association's final offer in the overtime pay dispute is the more appropriate of the two final offers;

(11) While the record does not strongly support the position of either party, the Association's final offer with respect to the contract termination language dispute is the more appopriate of the two final offers.

Selection of Final Offer

In light of the fact that this arbitration proceeding has been undertaken pursuant to form 1 rather than form 2, as described in Section 111.77 (4) of the Wisconsin Statutes, the Arbitrator is faced with the necessity of selecting the final offer of either of the two parties in its entirety.

In consideration of the entire record before me, including the preliminary conclusions summarized above, it is apparent to the Impartial Arbitrator that the final offer of the Association is the more appropriate. While various components of the Employer's final offer are more appropriate than their Association counterparts, the strong evidentiary support for the majority of the Association's positions justify the selection of its final offer.

By way of summary, the major arbitral criterion favoring the position of the Association was the comparison factor. In connection with the remaining statutory criteria, neither the evidence bearing upon the interest of the public nor that relating to ability to pay could properly be assigned definitive weight in these proceedings; the cost of living factor, particularly as related to the size of the deferred general wage increase favored the final offer of the Association; and the collective bargaining history of the parties relative to past salaries paid to fire-fighters somewhat favored the position of the Association.

1./ Employer brief, page 5.

2./ How Arbitration Works, Bureau of National Affairs, Third Edition - 1973, page 746.

3./ The Arbitration of Wages, University of California Press - 1954, page 54.

4./ Ibid, page 12.

5./ Ibid, page 4.

AWARD

Based upon a careful consideration of all the evidence and argument, and pursuant to the various arbitral criteria provided in Section 111.77 (6) of the Wisconsin Statutes, it is the decision if the Impartial Arbitrator that:

(1) The final offer of the Whitefish Bay Firefighters Association, Local #819, I.A.F.F., is the more appropriate of the two final offers before the Arbitrator;

(2) Accordingly, and effective January 1, 1979, the Association's final offer, herein incorporated by reference into this Award, shall be implemented by the parties.

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

May 21, 1980
Waterford, Wisconsin