ARBITRATION OPINION AND AWARD

In the Matter of Arbitration

Between

CITY OF OAK CREEK, WISCONSIN

And

OAK CREEK PROFESSIONAL FIRE FIGHTERS ASSOCIATION, LOCAL 1848, AFL-CIO

Interest Arbitration
Case XXXIII - No/ 25402
MIA - 454
Decision No. 17587-A

Impartial Interest Arbitrator

William W. Petrie
1214 Kirkwood Drive
Waterford, Wisconsin 53185

Hearing Held

April 28, 1980
Oak Creek City Hall
Oak Creek, Wisconsin

Appearances

For the Employer — MOORE MANAGEMENT SERVICES, INC.
By David P. Moore
2345 N. 70th Street
Wauwatosa, Wisconsin 53213

For the Association — OAK CREEK PROFESSIONAL FIRE FIGHTERS ASSOCIATION - LOCAL 1848
By Alan Downs, President
P.O. Box 123
Oak Creek, Wisconsin 53154

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the City of Oak Creek, Wisconsin, and Local Union #1848, of the Oak Creek Professional Fire Fighters Association, AFL-CIO; at issue in the proceeding are the wages, hours and terms and conditions of employment for a one year labor agreement covering calendar year 1980.

The parties were unable to independently reach full agreement on the terms of a new labor agreement and, on December 3, 1979, the City filed a petition with the Wisconsin Employment Relations Commission, requesting the initiation of compulsory final and binding arbitration pursuant to Section 111.77 (3) of the Municipal Employment Relations Act. On February 7, 1980, after a preliminary investigation, the Commission issued the appropriate Findings of Fact, Conclusions of Law, Certification of the Results of Investigation and an Order Requiring Arbitration of the impasse. On February 20, 1980, the Commission issued an order appointing the undersigned to hear and decide the matter pursuant to Section 111.77(4)(b) of the Act.

A hearing was conducted on April 28, 1980 at the Oak Creek City Hall, at which time both parties received a full opportunity to present evidence and argument in support of their respective positions. Both parties closed with the submission of post-hearing briefs, after which the hearing was closed by the Arbitrator on June 2, 1980.

THE FINAL OFFERS OF THE PARTIES

The impasse items before the Impartial Arbitrator in these proceedings consist of the following:

(1) The wage rates for calendar year 1980;
(2) The appropriate clothing allowance;
(3) The method of paying bargaining-unit employees while they are temporarily assigned as acting officers;
(4) Appropriate compensation for those possessing EMT certification;
(5) Carryover provisions for certain unused vacation or holiday allowances;
(6) The number of paid holidays per year;
(7) Eligibility for and premium payment for hospital and surgical insurance coverage for retirees;
(8) Dental insurance coverage for those in the bargaining-unit.

The final offer of the Employer consisted of the following proposed changes in the prior labor agreement:

(1) Wage increases of 8% effective January 1, 1980, and an additional 2% effective July 1, 1980;

(2) An increase in the clothing allowance from $175.00 per year to $190.00 per year.

The final offer of the Association consisted of the following proposed changes in the prior agreement:

(1) Wage increases of 8% effective January 1, 1980, and an additional 5% effective July 1, 1980;

(2) Payment at the appropriate higher rate of pay for employees temporarily assigned as acting officers;

(3) An allowance of 1% of base pay for all employees certified as EMTs.

(4) An increase in the uniform allowance to $225.00 per year;

(5) Carryover into the next year of vacation and/or holiday pay allowances not used due to illness or injury;

(6) Additional one-half day holidays on Good Friday and on New Year's Eve;

(7) The payment of full hospitalization and surgical insurance premiums for future retirees who were hired after January 1, 1978;

(8) The providing of dental insurance for those in the bargaining unit, and the payment of $14.00 per month in premium costs by the Employer.

THE STATUTES

The merits of the dispute are governed by the provisions of Section 111.77(6) of the Municipal Employment Relations Act, which provides as follows:

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

(a) The lawful authority of the employer.

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

1. In public employment in comparable communities.

2. In private employment in comparable communties.

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

(f) The overall compensation presently received by the employees, 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."

POSITION OF THE EMPLOYER

In support of its final wage offer, the Employer presented the following principal arguments:

(1) That its final wage offer of an effective 9% overall salary increase for 1980 is higher than the average increase granted in comparable communities; that the new salary proposed for 1980 would improve the standing of those in the bargaining-unit, relative to fire fighting employees in comparable communities;

(2) That there is no comparative basis for the Union's request for an effective 10½% overall salary increase, and that the total roll up costs of the Union's proposal are far in excess of any reasonable figure;

(3) That cost-of-living increases without corresponding increases in productivity, contribute to the current spiraling inflation;

(4) That the Union request for comparisons of wages paid bargaining unit fire fighters with the higher wages paid to Motor Pump Operators is not logical, because only one employee per vehicle is so classified.

In support of its proposal for no change in the present practice with respect to payment for temporary assignment as an officer, it presented the following basic contentions:

(1) That the present practice of paying for temporary assignments of either one-half or one full shift is a long standing practice and is comparable with the practices of other comparable communities;

(2) That the only time that temporary assignments are necessary is when a Lieutenant is either off due to an on-duty injury or on some other form of paid absence; that paying an additional bargaining-unit employee at the higher rate increases the roll up cost of all paid time off;

(3) That the only time that a firefigher would fill-in for a Lieutenant and not be compensated in full under the present policy, would be when a Lieutenant was absent without prior notice due to an unexpected occurance; that the Union failed to provide a single example of any occurance where a firefighter was not fully compensated for a temporary assignment as a Lieutenant.

That there is no justification for the requested additional compensation for certified E.M.T. firefighters, for the following reasons:

(1) All Oak Creek firefighters are E.M.T. certified, and there is no basis for an additional general wage increase;

(2) Special E.M.T. pay is not justified on the basis of comparisons with other Milwaukee metropolitan area public employees.

That the Employer's proposed increase in clothing allowance is more appropriate than the Union's proposal, in that it would improve the position of those in the bargaining unit relative to other comparable employers and employees.

That the Employer's offer to carry-over vacation allowance in the event of sickness or injury was agreed upon during negotiations, and should resolve the issue of carry-over of vacations and holidays; that the comparison criterion with respect to this item also favors the final offer of the Employer.

That there is no basis for the two additional one-half day holidays requested by the Union; that the Employer currently works a traditional schedule, pays overtime rates and grants time off; that these practices are better than the practices in comparable communities, and justify retention of the status quo relative to holiday pay allowance.

In support of its contention that the Union's request for the Employer to pay the entire insurance premium costs for health insurance for retirees is not justified, the Employer presented the following basic arguments:

(1) That retirement at age 55 with a full pension for those in the bargaining unit would place a large burden on the tax payers of Oak Creek;

(2) That neither practices in comparable communities, nor current practice in the Oak Creek Police Bargaining unit justify the Union's demand.

That there is no logical basis for the Union's request for dental insurance and for the payment by the Employer of a $14.00 monthly premium; that Oak Creek teachers and various private sector employees are distinguishable from those in the bargaining-unit on various grounds, and that comparison with practices for fire fighters in comparable communities offers no justification for the request.

In summary that contract negotiations, rather than interest arbitration should be used for the introduction of the various new items under consideration. Additionally, that the comparison criterion strongly favors the position of the Employer.

POSITION OF THE UNION

In support of its final wage offer, the Association presented the following principal arguments:

(1) That the top paid fire fighter in the bargaining-unit should be compared, where applicable, with employees classified as Motor Pump Operators and who work for comparable employers; that this had been the past practice of the parties in prior negotiations;

(2) That the Employer's maximum salary comparison figure on its exhibits, used the increase effective 7/1/80 rather than an average monthly figure for the year, thus over-stating the value of the Employer's offer;

(3) That the wage comparison figures cited by the Union, employing average wage figures and M.P.O. maximum salary comparisons are more valid; that these figures show that the comparative wages paid in the bargaining-unit are unduly low and are not keeping pace with those paid elsewhere;

(4) That employees in the bargaining-unit have not kept pace with inflation during the period 1971-1979; specifically that the aggregate decline in purchasing power during this time period was 10.7%, an average decline of approximately 1.2% per year;

(5) That, assuming a 10% rate of inflation for 1980, the Union's final offer would entail another decline in purchasing power of 2.3% and the Employer's final offer would result in a decline of 3.2%; further, that any increase in inflation beyond 10% for the year 1980, would further reduce the real earnings of those in the bargaining-unit;

(6) That Milwaukee consumer prices as measured by Consumer Price Index Statistics, have increased more rapidly than national increases in prices;

(7) That the bargaining-unit employees have experienced an increase in base rate at the same time that their take home pay has fallen;

(8) That the Employer's cost of base salary and retirement contributions, when corrected for real purchasing power, would decline relative to 1979 under the Employer's offer and would show only a small increase under the Association's final offer;

(9) That the total cost of the Employer's final offer package is approximately 8.52%, while the Union's offer would amount to approximately 12.79%; that the former is below the current level of inflation, while the latter is approximately equal to the rate of 1979 inflation; further that approximately .79% of the increase is due to required training, for which only the costs are paid by the Employer.

In support of its contention that a 1% higher wage level should be paid to those with E.M.T. training, the Association presented the following principal arguments:

(1) That other employers have paid employees at overtime rates for time spent in E.M.T. training, while the Employer has not compensated those in the bargaining-unit at all, for those past hours in training;

(2) Pursuant to the above, that the lack of E.M.T. pay by comparable employers, is not persuasive, due to the fact that the Employees have and are being compensated in a different manner;

(3) That the proposed E.M.T. bonus is also justified on the basis of the referenced increases in cost of living;

(4) That the fire fighters have had declining earnings relative to other fire fighters and also relative to Oak Creek Policemen;

The Association submitted that its request for a tenth holiday is justified by comparison considerations, both outside and inside the City; specifically it submitted that all other full time employees in the City, including the Police Department, the Highway Department and Clerical Workers receive 10 holidays; additionally, that the Chief, the Assistant Chief, and one Captain already receive 10 holidays.

In support of the request for full acting pay, the Union suggests that this is far more reasonable than any partial pay for work performed at a higher level.

In connection with its request for carryover rights for unused vacation and holiday benefits, the Union presented the following basic arguments:

(1) That the Employer's agreement in connection with vacation pay does not specifically say what happens to carried-over vacation benefits;

(2) That logic and equity point toward the carryover of both vacation and holiday benefits, when an individual is unable to use these benefits due to illness.

In support of its request for a higher uniform allowance increase than that offered by the City, the Union cited the following factors:

(1) That seven of ten comparable departments now receive as much or more of a clothing allowance than Oak Creek fire fighters;

(2) That the $225.00 requested is equivalent to the amount received by the Fire Captains and the Police Department;

(3) That the current cost of uniforms for one year, run approximately $250.00 to $300.00 per year, significantly higher than the $225.00 annual allowance requested by the Association.

In support of its request for fully paid Employer medical insurance premiums for retirees, the Union argued that it had only agreed to a reduction in the Employer's contribution from 100% to 50% in last contract negotiations, based upon the understanding that the same concession would be forthcoming in the City's negotiations with other Unions; since this understanding was not born out in practice, that the Employer has an obligation to return to the prior practice of fully paying these premiums in the future.

In support of its request for dental insurance coverage at a cost to the Employer of $14.00 per month, the Union cited the practice of fire departments in Caledonia and South Milwaukee, as well as the Oak Creek Teachers, and various other private sector employers who already provide such a benefit. It suggested that the premium could well be paid from anticipated reductions in monthly premiums when the Employer next is experience rated by the insurer, citing a more than $15.00 per month premium reduction experienced by the Employer in 1978.

FINDINGS AND CONCLUSIONS

The first task facing the Impartial Arbitrator is to consider those statutory criteria which will have the primary impact upon the selection of the final offer of either of the parties. During the course of the proceedings, no disputes arose, and neither party advanced major arguments with respect to the lawful authority of the employer, the interests and welfare of the public and the financial ability of the city to pay, or to any changes in the criteria items during the pendency of the arbitration proceedings; while various stipulations were offered by the parties, no major differences arose in connection with this arbitral criterion.

While the Impartial Arbitrator has given consideration to all the statutory criteria provided in Section 111.70(6), the items primarily relied upon by the parties, and those most significantly impacting upon the selection of the most appropriate final offer, are the following:

(1) The comparison criterion;

(2) The cost of living criterion;

(3) The overall compensation criterion;

(4) Certain additional considerations falling within the provisions of paragraph (h) of Section 111.70(6).

Despite the fact that the Arbitrator is limited to the selection of the final offer of one of the parties in its entirety, for the sake of clarity, each of the impasse items will be separately discussed in light of the statutory criteria.

The Wage Impasses

In connection with the number and the size of general wage increases to be implemented in calendar year 1980, the parties primarily relied upon arguments relative to the comparison and the cost of living criteria.

It is a generally accepted principle that the comparison criterion is the single, most extensively relied upon and followed factor in the resolution of interest disputes. This factor is well described in the following extract from the highly respected book by Elkouri and Elkouri: 1./

> "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: 2./

> "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'."

Merely enunciating the principle of the relative importance of the comparison criterion, however, does not solve various underlying questions relative to how the comparisons should be made. In the case at hand, there were significant differences between the parties in the following respects:

(1) In comparing the wages which would be paid to fire fighters in the bargaining-unit if its offer were implemented, versus those paid by other comparable employers, the Employer used a maximum wage figure which included both the proposed increase for January 1, 1980 and the proposed additional deferred increase which would become effective July 1, 1980; the Union urged the conclusion that such a practice overstated bargaining unit wages for comparison purposes, and suggested that a lower average maximum wage for the year 1980 should be utilized;

(2) Four of the approximately one dozen comparable public employers emphasized by the parties use a Motor Pump Operator Classification, which is the highest paying position in these bargaining units. The Union urged the use of the wage paid to this classification for comparison purposes, but the Employer disagreed; the major basis for the Employer's disagreement was the fact that only one Motor Pump Operator is assigned to each vehicle, and the Union's suggested comparison would overstate the actual wages paid elsewhere in such a manner as to distort the comparisons.

The arguments advanced by the Union relative to using M.P.O. wage figures and for utilizing an average yearly maximum salary comparison figure for employees in the bargaining-unit, are ingenious, but are not persuasive to the Impartial Arbitrator. For the Arbitrator to regard the M.P.O. rate as the maximum rate for fire fighters for comparison purposes, when only a small number of employees hold this classification would be to distort the average salary figures used for comparison purposes; if the M.P.O. data were to be included for comparison purposes, the more logical approach would perhaps be to use a weighted average maximum earnings figure for the appropriate employers, averaging the maximum rate for both the M.P.O. and other conventional fire fighter classifications.

The Arbitrator additionally feels that it is totally appropriate to use for comparison purposes, the maximum wage rate to which an employee in the bargaining-unit can progress during the course of the year, which would give full consideration to the proposed increases anticipated for both January 1, 1980 and for July 1, 1980. This conclusion is indicated for the following primary reasons:

(1) The comparison factor is extensively relied upon in direct labor negotiations, and the Arbitrator is unaware of any conceptthat an increase granted in July of the year is only one-half as valuable, for comparison purposes, as one granted in January of the year;

(2) In matter of fact, an employee receiving higher aggregate percentage increases during the course of a calendar year, may be significantly better off than a counterpart receiving the same total dollar increases during the same year; by way of hypothetical example, an employee receiving a 12% increase in December of a year would be significantly better off than another employee who received an earlier 1% increase in January of the same year. In applying this principle to the case at hand, the employee benefiting from an 8% increase in January and an additional 2% in July is a full 10% higher at the end of the year than at the beginning;

(3) In comparing the size of general wage increases implemented for comparable employees by comparable employers during 1980, the Employer properly computed its 10% total increase as an average 9% increase, thus giving consideration to the fact that 2% of the increase was not being implemented until 7/1/80.

Pursuant to the above considerations, the Impartial Arbitrator has reached the following preliminary conclusions:

(1) In comparing the maximum wages paid to comparable fire fighters, it is not necessary to compare with the highest rate paid to M.P.O.s, where only a percentage of employees hold this classification for other employers;

(2) In comparing the maximum wages paid to comparable fire fighters, it is appropriate to consider the total aggregate increases to be received during the calendar year;

(3) In comparing the size of general wage increases paid during a calendar year, it is logical to consider when the increases are implemented during the calendar year.

Having established the above ground rules for the consideration of the comparison criterion, the Impartial Arbitrator will next move to an evaluation of the comparison data. The exhibits offered at the hearing by the Employer consisted of data from the communities of Brookfield, Brown Deer, Cudahy, Franklin, Glendale, Greendale, Greenfield, Shorewood, South Milwaukee and St. Francis; it excluded the communities of West Milwaukee and Whitefish Bay due to the fact that they were still in mediation-arbitration at the time of the hearing. Volunteer fire departments were excluded as not comparable, and the Cities of Milwaukee, Wauwatosa, and West Allis were excluded due to their larger size.

The Association's exhibits included 1980 wage data comparisons for the same communities referenced in the Employer's exhibits, also listing 1980 comparative data for Wauwatosa and Mount Pleasant. The Mount Pleasant figures are, however, hard to compare due to automatic cost of living escalation in past years.

An examination of the data submitted by the parties indicates as follows:

(1) Oak Creek fire fighters ranked ninth of eleven comparable communities, in maximum salaries paid to fire fighters in 1979; this figure becomes tenth of twelve if Wauwatosa figures are inserted from the Union data;

(2) In comparing the size of the increases granted for the year 1980, among the various comparable communities, the Employer's final offer averaging 9.0% would make it the fourth highest 1980 wage increase among either the eleven or twelve comparable communities;

If the Union's final offer averaging 10.5% were implemented, it would be the highest 1980 increase among either the eleven or the twelve comparable communities;

(3) Assuming that the Employer's final wage offer were implemented, as of 7/1/80, the Oak Creek fire fighters would improve their standing to sixth of eleven comparable communities or to seventh of twelve if Wauwatosa is included;

> If the Union's final wage offer were implemented, the Oak Creek fire fighters would become the third highest paid of eleven listed communities or the fourth highest of twelve communites.

In considering the above data, it is apparent to the Arbitrator that the Employer's final wage offer is more closely attuned to comparisons with comparable communites. The Employer's offer of a 9% average wage increase for 1980 is above the average for comparable communities, and would also improve the comparative standing of those in the bargaining-unit, relative to the maximum salaries paid by other employers. The Union's final offer, on the other hand, would be the highest yearly increase among comparable communities, and would significantly raise the comparative standing of those in the bargaining unit relative to the maximums paid by other employers.

On the basis of the above, the Arbitrator must conclude that the application of the comparison criterion strongly favors the position of the Employer.

In connection with the application of the cost of living criterion, the Union strongly urged the conclusion that its membership had actually been losing purchasing power since 1971, and that its final wage offer was much more strongly indicated by cost of living considerations, than was the Employer's final wage offer. In support of this argument, it introduced data tending to show that actual take home pay in the bargaining-unit, after federal and state income taxes and social security deductions, had been reduced from a 1967 dollar equivalent of $6739 in purchasing power as of 1971, to an equivalent figure in terms of purchasing power of $6021 in 1979; this figure, it argues, would be further reduced in purchasing power in 1967 dollars to $5880 under the Union's final offer and to $5831 under the Employer's final offer. Ironically, argues the Union, the implementation of either offer actually involves further erosion of purchasing power.

While the Arbitrator must recognize that a certain degree of erosion of purchasing power is attributable to the movement of bargaining-unit employees into higher tax brackets as a result inflation, and to increases in social security taxes, the Employer cannot reasonably be expected to offer complete insulation against such tax related factors.

There can be no dispute that current and recent rates of inflation are major factors in labor negotiations and in interest arbitration, but the arguments of the Association contain two questionable assumptions. First, that the movement in the C.P.I. for the entire last decade is before the Arbitrator for consideration and, second, that the C.P.I. accurately reflects actual

...would require a re-litigation of every preceding arbitration between the parties and a re-examination of every preceding bargain concluded between them.."

In light of the fact that the parties are dealing with a series of one year labor agreements, the base period for cost of living consideration would properly be January 1, 1979, the effective date of the last prior agreement. Cost of living and wage comparisons before this date, must be presumed to have been treated by the parties in their prior labor negotiations, and will be dismissed from further major consideration by the Arbitrator.

For a variety of reasons, the consumer price index, itself, is generally considered to somewhat overstate the actual increase in living costs to the average consumer. Increases in medical costs, for example, play a significant role in recent increases in the C.P.I.; if an individual is shielded from the full impact of such increases by employer paid medical and hospitalization insurance, however, his cost of living has not increased to the same extent as is reflected in the index. One additional major ingredient in recent C.P.I. figures are the significant recent increases in the cost of housing; this increase is not felt by all persons, however, as all do not buy a new house every year.

Data on page 16 of the Union's exhibits show that wages increased from a yearly rate of $16,082 in 1978 to $17,032 in 1979, an increase of approximately 5.6%; if the Employer's offer were implemented, the yearly salary would increase to a maximum of $18,756 on July 1, 1980. This would represent an increase of approximately 16.62% over the 1978 rates. If the Union's final offer were implemented, the wage increases over the same period would total 20.13%, to a maximum yearly salary of $19,320.

Looking solely to the salary increases under consideration, without regard to the remaining impasse items, the Impartial Arbitrator is of the opinion that when the C.P.I. increases are corrected to reflect actual increases in cost of living to individual consumers, the corrected figures would probably be somewhere between the two final offers, perhaps marginally closer to the higher of the two offers (ie, that of the Union). Accordingly, when focusing upon C.P.I. increases since January 1, 1979, the figures somewhat favor the general wage increase proposal of the Union.

The Arbitrator finds considerable merit in the argument of the Employer that the proposed 1% additional wage increase for those with E.M.T. certification would amount to an additional 1% general wage increase, due to the fact that all members of the bargaining-unit have the certification. Additionally, there is considerable persuasive value in the fact that none of the comparable communites pay any additional compensation for those who are E.M.T. trained.

The Union's argument relating to the fact that bargaining unit employees were not paid for their E.M.T. training time in the past, to the same extent as were those working in comparable communities, is persuasive on the equities. However, it must be recognized that the parties dealt with this issue in past negotiations, and, in the absence of evidence to the contrary, must be presumed to have reached a mutually satisfactory settlement on the matter.

There is simply nothing in the record which would persuasively indicate to the Arbitrator that an additional one percent general wage increase, in the form of an E.M.T. certification premium, would be justified under the statutory criteria.

In connection with the Union's request for a modification of the current policy with respect to payment for time spent acting as an officer, there is considerable equity in the suggestion that an individual should be compensated for all such time worked in a higher rated classification. On the other hand, the justification is apparently largely a theoretical one, due to the fact that no evidence was introduced at the hearing, indicating any lost wages due to uncompensated, short term, temporary assignments. Additionally, there is little in the way of evidence or argument in the record which relates this impasse item to the statutory criteria; the practices of other employers, for example, do not support the requested change.

Frankly, the Impartial Arbitrator sees no persuasive reason why the parties were unable to come to agreement on the officer pay assignment issue. To the extent that the Union's offer entails little or no costs, and is supported by equitable considerations, the Arbitrator feels that it is slightly favored in these proceedings; the Employer's arguments relative to double payment and to roll-up costs are more theoretical than persuasive.

Based upon all the above, the Impartial Arbitrator has reached the following preliminary conclusions with respect to the wage impasse items:

(1) The comparison criterion strongly favors the final offer of the Employer;

(2) The cost of living criterion when considered from the effective date of the last negotiated agreement, does not strongly favor the position of either party; it somewhat favors the Union's final wage offer;

(3) The request for an additional 1% salary premium for those with E.M.T. certification is not justified on the basis of comparisons, nor does the negotiations history during the immediate past labor negotiations justify the additional salary premium request; the fact that all members of the bargaining-unit have such E.M.T. training means that the requested premium is really an addition to the general wage increase request;

(4) The record in this matter does not strongly favor the position of either party in connection with the dispute over payment for temporary assignment as an officer.

The Annual Clothing Allowance Issue

The Union is requesting an increase from $165.00 per year to $225.00 per year in the annual clothing allowance, while the employer is offering an increase to $190.00 per year.

The average yearly clothing allowance for 1980, as reported in the Employer exhibits at page 29, is $185.00 for the ten reported communities. The Employer's final offer of $190.00 per year is, therefore, above the average for comparable communities, and there is no comparable employer that pays as much as the $225.00 per year requested by the Association.

While the Union's contention that seven of ten comparable communities have a higher clothing allowance than the previous Oak Creek allowance is correct, the Employer's final offer of an increase to $190.00 would restore competitive balance to the allowance for those in the bargaining-unit.

The Union additionally alleged in its brief that uniform costs run between $250.00 and $300.00 per year, but no verification was offered relative to this figure. While the current yearly allowance for the Fire Captains and for those in the Police Department must be considered, these factors cannot, in the view of the Arbitrator, be assigned definitive importance on this impasse item.

Primarily based upon the application of the statutory comparison criterion, the Arbitrator feels that the Employer's final offer of an increase to $190.00 per year in uniform allowance, is the more appropriate of the two final offers.

The Impasse Relative to the Number of Holidays

The Union's request for two additional one-half day holidays would bring to a total of ten, the number of holidays enjoyed by members of the bargaining-unit. In support of its request, the Union primarily cited the practice of other comparable employers, which show that Brookfield, Cudahy, Franklin, Glendale, Greenfield, St. Francis and South Milwaukee have either ten or twelve paid holidays; seven of the eleven comparable Employers, therefore, already have more paid holidays than do the fire fighters in the bargaining-unit. Additionally, the Union relied upon the fact that other Oak Creek employees currently receive ten holidays; it cited the Chief, the Assistant Chief, one Captain, the Police Department, the Highway Department and all clerical workers.

Despite the Fire Department's practice of working employees during certain holidays and paying them at time and one-half, plus thereafter granting paid compensatory time off, the evidence in the record strongly favors the Union's demand for two additional one-half day holidays, to bring them to the rather common level of ten paid holidays per year. The comparisons with other employers and with other city employees simply cannot be lightly dismissed from consideration.

The Remaining Impasse Items

The remaining impasse items relate to suggested changes in past policies with respect to carryover of vacation and sick leave, the assumption by the employer of full premium responsibility for retiree hospital and medical insurance, and the addition of a program of dental insurance.

Perhaps at this point and with respect to the remaining impasse items, it would be helpful for the Arbitrator to emphasize that interest arbitration is not an exact science where the arguments and the statistics of both parties can be plugged into a formula and the correct result tabulated. Rather, it is an attempt to reach the same decision that the parties themselves would have reached had they been successful in bargaining to a conclusion. This factor was dealt with as follows by Elkouri and Elkouri: 4./

> "In a similar sense, the function of the 'interest' arbitrator is to supplement the collective bargaining process by doing the bargaining for both parties after they have failed to reach agreement through their own bargaining efforts. Possibly the responsibility of the arbitrator is best understood when viewed in that light. This responsibility and the attitude of humility that appropriately accompanies it have been described by one arbitration board speaking through its chairman, Whitley P. McCoy:
>
> 'Arbitration of contract terms differs radically from

> arbitration of grievances, The latter calls for a judicial determination of existing contract rights; the former calls for a determination upon considerations of policy, fairness, and expediency, of what the contract rights ought to be. In submitting this case to arbitration, the parties have merely extended their negotiations - they have left to this board to determine what they should by negotiations, have agreed upon. We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men have agreed to?...To repeat, our endeavor will be to decide the issues, as upon the evidence, we think reasonable negotiatiors, regardless of their social or economic theories might have decided them in the give and take of bargaining..."

In applying the above principles to the case at hand, it should be kept in mind that an interest arbitrator will be reluctant to overturn an established benefit and/or will be reluctant to add new benefits or to innovate unless the statutory criteria are clearly met. The reluctance of interest arbitrators to disturb provisions or benefits contained in prior agreements was also referenced by Elkouri and Elkouri: 5./

> "Arbitrators may require 'persuasive reason' for the elimination of a clause which has been in past written agreements.."

In addressing attention to the request for the Employer to pay 100% of the premium cost for retiree hospitalization and medical insurance for those hired after January 1, 1978, it must be kept in mind that the parties only recently negotiated the 50% obligation into their labor agreement, in lieu of the prior 100% obligation. While the Union suggested that its agreement was predicated upon the assumption that other bargaining units in the City would follow suit, it did not make the agreement to change conditional upon this factor.

In looking to comparisons with comparable employers, it is quite apparent that the Employer's present practice is already significantly better than the normal practice, in that the majority of employers have no provision at all for retiree health insurance.

For the above reasons, and particularly in light of the referenced reluctance of interest arbitrators to interfere with established negotiated practices, particularly those only recently agreed upon, it is my finding that there is no statutory basis for the requested increase to 100% payment by the Employer of retiree medical insurance premiums.

The Association's request for the introduction of dental insurance in the new agreement, along with a $14.00 per month premium payment by the Employer, is also a completely new benefit. There were no persuasive reasons advanced that would support an award incorporating such a benefit into the parties' labor agreement at this time. Only two of ten comparable public sector employers presently provide such a benefit and, while there is a growing tendency toward such programs in the private sector, such changes should most appropriately be left to the agreement of the parties in direct negotiations. This is another of the areas referenced above, where interest arbitrators are understandably reluctant to add innovative new benefits unless the statutory criteria are clearly met; in the case of dental insurance, no strong case can be made for the benefit on the basis of the statutory criteria.

The final remaining impasse item is the request for carryover of unused vacation and holidays. The Employer agreed to the carryover of scheduled vacation, where the employee was on sick or injury leave and either in the hospital or under a doctor's care, but it made no similar proposal for the carryover of holiday allowances.

In looking to the practice in comparable communities, it is quite clear that the change agreed to by the Employer placed it in a comparable position with other communities. While the majority of such communities provide some form of carryover for vacation benefits, only two of ten have any provision at all for carrying over unused holiday allowance. There were simply no statutorily valid and persuasive reasons advanced, that would support a conclusion that the carryover of holiday allowances would be justified at this time.

Summary of Preliminary Conclusions

For all the reasons discussed above, the Impartial Arbitrator has reached the preliminary conclusions summarized below:

(1) The comparison criterion strongly favors the final wage increase offer of the Employer, while the application of the cost of living criterion somewhat favors the final wage offer of the Association;

(2) The record does not show any reasonable statutory basis for the requested addition of a 1% wage increase for employees with E.M.T. certification;

(3) The record does not strongly favor the position of either party in connection with the dispute over payment for temporary assignment as an officer.

(4) The record and the application of the statutory criteria clearly favor the Employer's offer relative to the amount of increase in the annual clothing allowance;

(5) The request of the Union for two additional one-half day holidays is clearly justified by the record;

(6) The application of the statutory criteria to the Union's request for dental insurance, fully paid retiree hospitalization and medical insurance, and for carryover of holiday benefits clearly indicates that no changes in these areas are justified.

Selection of the Final Offer

During the course of the proceedings, the Impartial Arbitrator considered all the statutory criteria referenced earlier. In consideration of the entire record before me, including the discussion and the preliminary conclusions referenced above, it is apparent to the Impartial Arbitrator that the final offer of the Employer is the more appropriate of the two final offers before me. While certain elements of the Union's final offer were more appropriate than the corresponding elements of the Employer's final offer, the preponderance of major considerations favored the selection of the final offer of the Employer.

Footnotes

1./ How Arbitration Works, Bureau of National Affairs, Third Edition - 1973, page 746. (footnotes omitted)

2./ The Arbitration of Wages, University of California Press, 1954, page 54. (footnotes omitted)

3./ Ibid, page 75.

4./ Ibid, page 54.

5./ Ibid, page 788.

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 of the Impartial Arbitrator that:

(1) The final offer of the City of Oak Creek, Wisconsin is the more appropriate of the two final offers before the Impartial Arbitrator;

(2) Accordingly, the City's final offer, herein incorporated by reference into this award, is ordered implemented by the parties.

William L. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

July 8, 1980
Waterford, Wisconsin