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STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

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In the Matter of the Petition of

FRANKLIN PROFESSIONAL FIREFIGHTERS  
ASSOCIATION LOCAL 2760, I.A.F.F.

For Final and Binding Arbitration  
Involving Firefighting Personnel  
in the Employ of

CITY OF FRANKLIN  
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Case XXIII

No. 27599

MIA-579

Decision No. 18609-A

Appearances:

Mr. Leroy H. Waite, I.A.F.F. State Representative, and Mr. Thomas S. Gutzke, President, Franklin Professional Firefighters Association, Local 2760, appearing on behalf of the Association.

Moore Management Services, Inc., by Mr. David P. Moore, appearing on behalf of the Employer.

ARBITRATION AWARD:

On April 30, 1981, the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission to issue a final and binding Arbitration Award in the matter of a dispute existing between Franklin Professional Firefighters Association, Local 2760, I.A.F.F., referred to herein as the Association, and City of Franklin, referred to herein as the Employer. The appointment was made pursuant to Wisconsin Statutes 111.77 (4)(b) which limits the jurisdiction of the Arbitrator to the selection of either the final offer of the Union or that of the Employer. Hearing was conducted on June 12, 1981, at Franklin, Wisconsin, at which time the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. No transcript of the proceedings was made, however, briefs were filed in the matter which were exchanged by the Arbitrator on July 23, 1981.

THE ISSUES:

Two issues were impasse in negotiations between the parties dealing with the Association proposal for three hours stand-by time and the Association proposal that employees be paid time and one-half for all training conducted outside of the standard work day.

The final offers of the parties read:

FINAL OFFER OF THE ASSOCIATION:

1. Standby time 3 hours at straight time in addition to hours of actual work.
2. Art. V Sec 3 Delete departmental training.
4. All retro to Jan. 1, 1981.

EMPLOYER FINAL OFFER:

1. City agrees to stipulations as signed with Investigator Greco 4/1/81.

2. Standby/on call: status quo.
3. Overtime at 1½ for training; status quo.

The terms of the predecessor Collective Bargaining Agreement, which the Association final offer proposes to modify read:

1. "Article V, Section 3. Overtime Pay. Overtime shall be at time and one-half for all call backs except departmental trainings and department meetings. Pay for departmental trainings and departmental meetings shall be on a straight time basis."
2. There are no provisions in the predecessor Agreement for 3 hours stand-by time at straight time.

#### DISCUSSION:

The Employer argues that the Employer final offer is fair and reasonable, adoption of which would maintain the firefighters' relative standing with firefighters of other Wisconsin communities, and which would be consistent with 1981 settlements involving other city employees. The Employer further argues that the Association proposal concerning 3 hours straight time pay, if implemented, would give rise to unprecedented increases for firefighting personnel which cannot be justified by past practice, firefighter inconvenience or principles of fairness or equity. Finally, the Employer contends that the Employer proposal concerning compensation for call back training is fair and reasonable, particularly in view of past practice, existing compensation levels and its agreement to pay time and one-half for departmental meetings call back; the Association has not shown a compelling need for improvement in the area.

The Association argues that work within the Employer fire department is unique compared to other fire departments in Milwaukee County, because firefighters here are employed on a 45 hour week and do not work the traditional firefighter hours found in other communities which require duty around the clock when scheduled to work. The Association contends that in view of the Employer requirement that they be on call for 27 hours a week, their offer, which would require 3 hours pay for this stand-by time, is reasonable. The Association additionally points to the Employer's ability by reason of the provisions of Article V, Section 2 to schedule stand-by hours in such a way so as to avoid impact of this provision. With respect to time and one-half for training meetings, the Association argues that since attendance at said meetings is mandatory and occurs outside the normal work day and week, time and one-half compensation is justified. Finally, the Association argues that the additional cost of \$11,564.00 is comparatively modest and well within the Employer's ability to pay.

The Employer also argues that the Association final offer with respect to stand-by time is imprecise and ambiguous because the Employer contends that the Association offer is not clear as to the type of stand-by time to which the 3 hour pay would apply. The record is clear that before and after the regular 9 hour work day employees are expected to be available for call one hour prior to their regular work shift and two hours after their regular work shift. In addition to the foregoing, employees are assigned certain stand-by responsibilities for rescue purposes, wherein they are on stand-by duty for that purpose for 12 hours. All of the Association submissions clearly limit the application of their proposed 3 hour stand-by time provision to the 12 hour stand-by time required for rescue purposes. It is equally clear that the Association proposal is not intended to apply to the one hour preshift and two hour post shift stand-by time. From the foregoing it is clear to the undersigned that the Association has removed whatever ambiguity or potential misunderstanding as to intent which their final offer may have contained in their submissions to this Arbitrator. These submissions create a bargaining history which fleshes out the meaning of the Association proposal. Consequently, the undersigned is certain that the adoption of the Association proposal in this matter would not result in misapplication of stand-by time or misunderstandings with respect to

how the provision should be applied, if it were adopted. Consequently, the Employer argument that the Association offer should not be adopted because of the vagueness of the proposal is rejected. Having determined that the Association offer should not be rejected because of imperfections in its offer, the undersigned will proceed to determine which final offer should be adopted, based on the relative merits of the parties' offers.

Both issues in this dispute are economic and have direct bearing on wages paid to the employees. Given the fact that this dispute is essentially over a wage issue, one would normally look to comparabilities between the wages paid firefighters in Franklin compared to wages paid to firefighters in comparable communities as the prime criteria to determine the outcome of this dispute. The comparables here, are difficult to establish. The record establishes that the work schedules in the Employer's fire department are unique when compared to the work schedules for the surrounding suburban Milwaukee communities. The surrounding suburban Milwaukee community fire departments work a typical firefighter schedule, a 56 hour week with 24 hour duty shifts. The fire department of this Employer has a blend of regular full time paid firefighters and volunteers. The regular employees in the Employer's fire department have a work week of 45 hours per week, based on 9 consecutive hours per day, Monday through Friday, with Saturday and Sunday off. (Article V, Section 2, Collective Bargaining Agreement) In addition to the regular 45 hour work week in this fire department, employees are on stand-by every day for an additional 3 hours. If one were to include this additional 3 hour stand-by responsibility the 45 hour work week would become 60 hours, and the undersigned concludes that the time required that an employee be regularly available to the Employer in this fire department is 4 hours per week greater than the commitment of firefighters in other suburban Milwaukee communities who work a typical 56 fire fighter schedule. This represents a 7.1% greater work commitment to the Employer here than the hours commitment made by employees of other suburban Milwaukee departments, and this stand-by time is not compensated outside of the regular wage schedule. If employees are actually called to duty during the 3 hours per day of stand-by time they are paid overtime at time and one-half with a minimum guarantee of one hour's pay at overtime rates. The record also reflects that call back during the one hour pre shift stand-by and two hour post shift stand-by are quite infrequent. From all of the foregoing, the undersigned is persuaded that the weekly time commitment of firefighters in the Employer's fire department is greater than the time commitment expected from firefighters in other suburban Milwaukee communities, without considering the stand-by time to which the Association offer in this dispute is directed.

In addition to the 60 hour per week time commitment made by the employees in this department, regular employees of the department are assigned a minimum of one night a week for ambulance rescue squad stand-by, from 6:00 p.m. to 6:00 a.m. This is the stand-by time to which the Association proposal is directed. Association Exhibit "E" establishes that the 12 hour stand-by time required of employees of this department is almost unique when comparing stand-by time requirements of 12 other suburban Milwaukee departments. Of the 12 suburban communities only Cudahy and Brown Deer require stand-by time at all, and employees in the Cudahy Fire Department are limited to one-half day per month and receive two hours comp time for the stand-by, while in Brown Deer employees serve stand-by seven days per month and are compensated at \$33.00 per call. The foregoing evidence establishes to the satisfaction of this Arbitrator that the 12 hour rescue squad stand-by time when assigned by the Employer deserves compensation. The undersigned further concludes that the 3 hour straight time pay offer of the Association is reasonable compensation for the time commitment required.

The Employer argues that the call time provision would generate a 6.67% increase in the annual earnings of the firefighters in the employ of the Employer. Assuming a frequency of one 12 hour shift of stand-by per week, the Employer estimate of 6.67% appears to be accurate. Employer Exhibit #10 sets forth percentage increases 1981 over 1980 for firefighters in 13 suburban Milwaukee communities. The average settlement for those 13 departments calculates to 10.1%. Therefore, it is clear that the percentage increase, if the

Association offer is adopted, would be 6.2% greater than the average settlements of any other suburban Milwaukee community, providing the Employer continues a pattern of assigning one 12 hour stand-by shift per week per employee. The base salary or wages are undisputed here, and the stipulations of the parties show that the top firefighter rate in this fire department for the year 1981 will be \$1,684.00 per month. Maximum monthly salaries in other suburban Milwaukee communities for firefighters are also set forth in Employer Exhibit #10, and they average \$1,726.77. Thus, the 1981 salary for Franklin firefighters is \$42.77 less than the average salary paid to firefighters in other suburban Milwaukee communities. Assuming that the 12 hour stand-by assignments continue at a frequency of one time per week, the Franklin firefighter employees will regularly earn an additional amount of approximately \$107.50 per month. If the stand-by pay provision were included, and the same frequency assignments continue, then Franklin firefighters would be approximately \$65.00 over the average salary paid to firefighters in other suburban Milwaukee communities. Given the 60 hour per week time commitment to the Employer by the firefighters in the Franklin department compared to the commitment of 56 hours in other communities, the undersigned considers the stand-by proposal to be warranted.

With respect to the issue of time and one-half for training, the Employer argues that in the absence of a compelling need this issue should be left to future negotiations between the parties. The record is clear that the Employer agreed in this round of bargaining to make overtime spent in departmental meetings payable at time and one-half, where in the predecessor Agreement both departmental meetings and training outside of the work week were paid at straight time. The Arbitrator disagrees that the firefighters need to show compelling need for the additional compensation. The Arbitrator is persuaded that the Employer has failed to make a case for payment of straight time for training here, because the firefighters to which this provision would apply actually provide the training to volunteers during these training sessions. (Testimony of Fire Chief Elmer Schreiber) Since the firefighters are performing training duties for the Employer rather than being instructed, the undersigned can see no reason to distinguish overtime payment for these purposes from any other overtime. The undersigned, therefore, concludes that time and one-half payment to the firefighters here to conduct training sessions for the Employer should be adopted. Furthermore, the testimony of Thomas Gutzke establishes that this Employer pays time and one-half for instruction time for police department employees when they provide the instruction outside of the regular work week.

Therefore, based on all of the evidence, and the discussion set forth above, after considering the argument of the parties and the statutory criteria, the Arbitrator makes the following:

AWARD

The final offer of the Association is to be incorporated into the parties' written Collective Bargaining Agreement which becomes effective January 1, 1981.

Dated at Fond du Lac, Wisconsin, this 21st day of August, 1981.

  
Joe B. Kerkman,  
Arbitrator

JBK:rr