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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

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In the Matter of an Arbitration
between

VILLAGE OF WEST MILWAUKEE
(FIRE DEPARTMENT)

and

WEST MILWAUKEE PROFESSIONAL FIRE
FIGHTERS ASSOCIATION, LOCAL 1417,
IAFF, AFL-CIO

* * * * *

Case XXV
No. 29022 MIA-617
Decision No. 19555-A

Appearances:

Mr. Roger E. Walsh, Attorney, Lindner, Honzik, Marsack,
Hayman & Walsh, S.C., for the Employer.

Mr. Timothy E. Hawks, Attorney, Shneidman, Myers, Dowling &
Blumenfield, for the Union.

Mr. Neil M. Gundermann, Arbitrator.

ARBITRATION AWARD

The Village of West Milwaukee (Fire Department), hereinafter referred to as the Employer, and West Milwaukee Professional Fire Fighters Association, Local 1417, IAFF, AFL-CIO, hereinafter referred to as the Union, were unable to agree on the terms of a collective bargaining agreement. Pursuant to Section 111.77, Wisconsin Statutes, the parties proceeded to arbitration. The undersigned was selected to hear and determine the matter in dispute, and such hearing was held on August 31, 1982 at the Village Hall in West Milwaukee, Wisconsin. The parties filed post-hearing briefs.

FINAL OFFERS OF THE PARTIES

Union's Final Offer

Wages: 5% effective 1/1/82
4% effective 7/1/82

Holiday: Add employe's birthday as a holiday

Employer's Final Offer

Wages: 4% effective 1/1/82
4% effective 7/1/82

Holiday: No Change

UNION'S POSITION:

It is the Union's position that comparable negotiated wage increases within the Milwaukee metropolitan suburban area establish that the Union's final offer regarding a wage increase is the more reasonable. The Union notes the instant proceedings are controlled by Section 111.77, Wis. Stats., and it is a "Form 2" proceedings as described by Section 111.77(4)(b). Section 111.77(6) sets forth the factors to be utilized by the arbitrator in reaching his decision including the following factor:

"(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 with other employes performing similar services and with other employes generally:

1. In public employment in comparable communities."

The Union emphasizes that at no time did the Employer argue that it was unable to financially meet the costs of the Union's final offer. The Union states that the total difference between the positions of the two parties is \$5,914; therefore the arbitrator need not consider the ability-to-pay issue.

The Union notes that none of the suburban fire fighters' collective bargaining units which have either negotiated a voluntary agreement or submitted final offers in impasse proceedings for the 1982 collective bargaining agreements have settled for an increase of less than 9 percent. The facts demonstrate that all other units reached negotiated increases for substantially larger percentage increases than that proposed by the Union. Of nine bargaining units which have reached voluntary settlements, the average increase is 10.58 percent. Additionally, this factor does not reflect the compounding effect of split-term increases. Among the three departments where impasses have occurred in negotiations, the employer's final offer is equal to or greater than the Union's final offer herein. The evidence also establishes that the Employer's offer in the instant dispute is a full 2 percent below the lowest settlement or offer in the Milwaukee metropolitan area. The Union's offer is lower than any other unit and it was designed to settle the instant dispute. The average increase is 50 percent higher than the Employer's proposal.

The Union emphasizes that the rank order of the West Milwaukee Fire Fighters' wages demonstrates the reasonableness of the Union's wage proposal. In this regard, in 1981 there were only three fire fighter units in the Milwaukee suburban area receiving a larger wage. The Union's final offer would result in a drop in this relative ranking from fourth position to eighth position. In contrast to the Union's position, the Employer's proposal would drop the rank order of the West Milwaukee Fire Fighters from fourth position to tenth position.

Under typical negotiation principles, the Union would find itself arguing for the preservation of its relative status quo as compared to other similarly situated bargaining agreements. This arbitration is exceptional in that the Union has made a proposal intended to settle the dispute at a rate which constitutes the lowest percentage increase in the Milwaukee metropolitan suburban area. The Employer's proposal would move the relative

rank order of wages in this Fire Department from the top third of the fire fighting units in the Milwaukee metropolitan area to the bottom third in only one year. Its final offer of an 8 percent increase during the year is a full one percent lower than any increase reached voluntarily. Its increase as measured by actual take-home pay is only 6 percent and is also the lowest in the Milwaukee area. The Union submits the Employer's proposal is not supportable by the factors set forth by Section 111.77(6).

The Union notes that the average mean fire fighter's wage at the end of 1981 was \$1,740 per month. At that time the West Milwaukee Fire Fighter's wage was \$1,762.59 per month, or \$22.59 per month in excess of the average. In 1982, under either the Union's final offer or the Employer's final offer, the West Milwaukee Fire Fighter's wages dropped below the average. Thus, the Union has dropped from a 1981 wage which was more than \$22 above the comparable average, to \$19 below the average under its proposal. The Employer's final offer would plunge the Union to a wage level \$54 per month below year-earlier average rates as compared to the negotiated settlement average. The Union submits this one-year plunge as proposed by the Employer is not supported by comparable statistics.

The Employer's evidence regarding wages is devoid of any historical perspective, and for this reason must be viewed with great caution. The negotiations for the 1982 agreement have resulted in a substantial erosion of the West Milwaukee Fire Fighters' wage position visa all Milwaukee suburban fire fighters. This is due to the Union's willingness to adopt a reasonable position in light of all circumstances. The Union contends the Employer's proposal asks too much, too quickly, as is apparent by the evidence offered by the Union.

The Citizens' Governmental Research Bureau's July 31, 1982 "Bulletin" at page 1 explains the cause for the skewing of comparative tax and property value data:

"For its population size the village maintains higher than average police, fire and public works services, due to the 71 industrial plants located in the village and the daytime influx of 15,000 to 20,000 workers."

The "Bulletin" also points out that industrial land accounts for 54 percent of the total land area which is an extremely high ratio. The February 12, 1977 "Bulletin" further illustrates the role played by industrial property in the Village of West Milwaukee. At that time the Village had \$70,659 equalized property value per capita compared to an eighteen suburban community average of \$17,622. Thus it may be inferred that the greatest share of tax obligation is shouldered by the industrial occupants of the property within the Village.

The Union notes that the evidence establishes that the Employer has reduced the number of employes in the Fire Department by three since 1977. This reduction has occurred within the bargaining unit ranks and constitutes more than 10 percent of the manpower therein.

The Union does not lightly disregard the impact of State mandated property tax exemptions of machinery and equipment, and Line A personal property (manufacturers' and merchants' inventories). Neither does it intend to understate the resulting

shift of property tax burden to residential property owners. However, the Union contends a fine balance must be struck between the tax pressures created by the developments, and the prevailing wage for fire fighting services. The "going cost" for such services has been previously established. The Union has presented a final offer which strikes that balance, whereas the Employer would stretch the diminution in relative position and below-average wage settlement beyond that necessary under the circumstances.

The Union argues that its proposal regarding an additional holiday is reasonably designed to maintain the Union's position with the mean of comparable Milwaukee suburban units. According to the Union, its proposal would place it in a tie at the bottom of the top seven departments in the Milwaukee area. Moreover, this improvement has been sought at the bargaining table for at least seven years. The Union characterizes this request as a marginal improvement which only slightly modifies its position within the comparable units. The proposal may fairly be viewed as one reasonably intended as a slight improvement in an issue regarding hours which does not appreciably modify the relative position of the West Milwaukee Fire Department. According to the Union, the average number of hours off for holiday pay either in the form of paid time or time off is 187.6 hours.

An additional argument is advanced by the Union that most comparable units have a superior vacation provision. The Union submits it is important that the vacation provisions of a collective bargaining agreement not be overlooked when an issue develops regarding holiday pay. Unlike virtually all other collective bargaining units in private and public sector labor relations, a fire fighter does not get a "day off" on a holiday. Platoon strength must be maintained and a fire fighter must report to work. Thus, a holiday, like a vacation, is in its simplest term time off with pay on no certain date, but rather is subject to scheduling arrangements pursuant to the collective bargaining agreement. Thus, it is important to note that several of the units upon which the Employer relies to demonstrate its comparable average holiday provision get back in vacation provisions what they might arguably fall behind in holiday time.

When the collective bargaining agreements as they regard time off with pay or pay without time worked are lined up, it should be clear that seven units are far ahead of West Milwaukee. The Union contends there remain only four units whose position is marginally inferior to that of West Milwaukee. Given this perspective it is clear that the Union herein has made a proposal to increase the number of holidays in a method that would maintain its relative position well within the average of the comparable units. It is also noteworthy that both the Police Department and the Department of Public Works receive a paid holiday on the employe's birthday. It is a benefit that has long been proposed in the firefighter's unit and is long overdue.

Based on the above arguments and the evidence of record the Union respectfully submits that it is entitled to an award adopting its final offer.

EMPLOYER'S POSITION:

The Employer contends that the difference in cost between its final offer and the final offer of the Union is approximately \$12,500. The wage cost is approximately \$5,914, and when added to the pension costs of \$1,348 the total wage differential is \$7,262. Additionally, based on the top fire fighter's average salary for the year under the Union's offer, the average hourly rate is \$7.78. The cost of granting one additional holiday then equals \$187 per employe, or a total cost of \$5,236 for the twenty-eight employes.

The Employer notes that other economic benefits have already been agreed to which include increasing Worker's Compensation differential pay from 120 to 180 days, and a \$40 per month increase in the family health insurance. This \$40 payment amounts to a 2.3 percent increase over the 1981 top fire fighter wage rate of \$1,762.59. It is further noted by the Employer that the Police Department employes have voluntarily settled with the Village on the same terms the Employer has offered the Union: 4 percent effective January 1, an additional 4 percent effective July 1, plus the \$40 per month health insurance increase.

The Employer asserts the economic conditions in the Village of West Milwaukee warrant the choice of the Employer's final offer as most consistent with the criteria listed in Section 111.77(6) Wis. Stats. Criteria "c" states:

"In reaching a decision the arbitrator should give weight to the following factors: . . .

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

West Milwaukee suburb consists of approximately two square miles with a 1981 population of 3,570 residents. The Village's population has decreased 19 percent since 1970, and the average age of its population is 38--the highest average of any municipality in Milwaukee County. Additionally, 20 percent of its population is age 65 and over, also the highest percentage of senior citizens of any municipality in Milwaukee County.

Fifteen percent of the Village area is residential, while 54 percent is utilized by 71 industrial plants which bring from 15,000 to 20,000 workers into the Village during the daytime. To provide services for this large industrial operation the Village has maintained a larger Fire and Police Department than would normally be required by its population. However, because of the change in the State property tax laws, which now exempt business machinery equipment and inventories from taxation, "the village no longer has the tax base to support these service levels. The local tax rate on the remaining taxable property has increased to compensate for the tax base loss." (CGRB Bulletin, 7/31/82.)

The headline and opening paragraph of the Citizens' Governmental Research Bureau's July 31, 1982 profile of the Village is a succinct picture of the problem:

"WEST MILWAUKEE FACES HIGHER PROPERTY TAXES
TO FINANCE INCREASE IN MUNICIPAL COSTS.

West Milwaukee is a fully-developed industrial suburb striving to maintain self-sufficiency

"and a community identity, despite a property tax base loss of 71% since 1974, doubling of the local tax rate since 1980, the rising cost of municipal services and the loss of population. Policies aimed at reducing expenditures and maximizing economic development have been initiated by the village board."

The Employer notes that it has taken a number of steps to combat the problems it is facing. These have included tax increases, user fees, and utilization of Federal and State grants for some capital projects as well as equipment. Additionally, in order to keep its tax levy down in prior years, the Village applied its cash reserve to supplement revenues. At this point there is little, if any, cash reserve left.

The Employer asserts its financial plight is the most severe of any municipality in the Milwaukee area that has a full-time fire department. During the period from 1976 to 1981, the equalized assessed value of every other municipality increased, from a low of 33.3 percent to a high of 97.7 percent. The average increase was 62.3 percent. In West Milwaukee there was a decrease of 28.2 percent--a 90.5 percent differential between West Milwaukee and the average of the other municipalities. In a one-year period from 1980 to 1981, eight of the fourteen other municipalities showed increases in equalized assessed value, while the other six had decreases ranging from 1 percent to 5.2 percent. The average still showed an increase of 1.3 percent. The Village showed a 19.5 percent decrease in this one-year period.

The Village notes it has steadily increased its tax rate so that within the past five years it has moved in the ranking of the fifteen municipalities from tenth place in 1977 to second in 1982. In 1977, the Village's tax rate was 5.2 percent below the average tax rate, while in 1982 it is 15.3 percent above the average tax rate. The increase in tax rate from 1981 to 1982 averaged 17.8 percent in the fifteen municipalities, while in West Milwaukee the increase was 31.9 percent.

The thrust of the Union's case appears to be that its offer should be selected to prevent dropping the fire fighters' wage rate in comparison with fire fighter wage rates in other municipalities from fourth place in 1981 to tenth place in 1982. Further, the Union contends that the total percentage increase for 1982 of either 8 percent, the Employer's offer, or 9 percent, the Union's offer, will be the lowest granted fire fighters in any municipality. While the Employer does not dispute these facts, it points out that even with the wage increase offered by the Employer, the West Milwaukee Fire Fighter and Lieutenant wage rates will be at or near the medium rate among the fifteen municipalities. The Employer's offer would place them the same amount (\$8 to \$11 per month) below the mean rates, as the Union offer would place them above the mean rates.

The Employer argues that when comparing West Milwaukee fire fighter wage rates with those in the other fourteen communities certain factors must be remembered: (1) The Village by far has the smallest population. (2) The Village has the least number of alarms per bargaining unit member, with its 18:1 ratio only a third of the 48:1 average. (3) The percentage of the Employer's total budget spent for its Fire Department is over twice as much as the percentage of the total budget spent on fire departments in other municipalities.

The Employer argues that the Union can show no justification to warrant the choice of the Union's wage increase, which is slightly higher than that agreed to by the police. In 1981, the parties reduced the differential between the police and fire fighter rates. The Employer's final offer would maintain the 1981 relationship.

The Employer notes that among the criteria to be considered by the arbitrator is the following:

"The average consumer prices for goods and services, commonly known as the cost-of-living."

It is emphasized by the Employer that during 1982 there has been a steady decline in the cost of living. The rise between July 1981 and July 1982 was only 2.9 percent according to the CPI (urban wage earners and clerical workers). Clearly, the Employer's offer is more consistent with the present increase in the cost of living.

Based on the favorable relationship to increases in the cost of living, the voluntary acceptance of the same economic package by the Village's Police Department employes, and the maintenance of an average wage relationship to other municipalities, all in the face of the adverse economic conditions under which the Village must now operate, the Village's final offer should be selected as the most consistent with the criteria listed in Section 111.77(6).

The Village contends the Union's demand for an additional holiday is without substantiation. The fire fighters work an average work week of 56 hours (2,912 hours per year) and are granted eight, 24-hour days off for holidays. They have a total of 192 hours of holiday time off per year. This amounts to 6.6 percent of the fire fighter's annual work hours. In contrast, the West Milwaukee police officers have an average work week of 39.7 hours, (which includes a ten-minute report time in addition to the eight-hour day,) or 2,065 hours per year, and are granted ten eight-hour-and-ten-minute days off for holidays. They have a total of 81.17 hours of holiday time off per year. Thus, holiday time off amounts to approximately 4 percent of a police officer's annual work hours. The Public Works Department employes work a 40-hour week (2,080 hours per year) and are granted eleven eight-hour holidays. They have a total of 88 hours of holiday time off per year. Thus, holiday time off amounts to approximately 4.2 percent of public works employes' annual work hours.

The Employer further argues that a comparison of vacation benefits shows a consistency between fire fighters, police officers and public works employes, however fire fighters presently enjoy the most favorable holiday benefits (over 50 percent better than that granted police and public works employes). The Employer contends there is no justification for distorting the holiday benefit relationship even more than it presently is distorted. Additionally, when compared to other Village employes there is no justification for an increase in holidays.

The Employer contends the holiday benefit presently enjoyed by the Union compares favorably with holiday benefits granted fire fighters in other municipalities. The Employer has developed a comparison of annual holiday hours either paid for or given as time off, and under this comparison the amount of holiday hours granted varies from 81 per year to 264 per year with an average of approximately 173 hours per year. The Union presently enjoys 192 hours of holiday time off per year, 11 percent more

than the average. The Union proposes to increase that to 216 hours, which would be 25 percent above the average.

The Employer also argues that the average length of service in the Department is 16.5 years. There are many employees (30 percent) with over 24 years of service who receive five weeks of vacation. Excluding the new employee, fire fighters in West Milwaukee will average 16.7 days off for holidays and vacation in 1982. That amounts to 401 hours per year, or 14 percent of their annual work hours.

The Employer contends there is no basis to support the Union's demand for an additional holiday, and the Union's inclusion of this additional costly benefit in its final offer should alone be sufficient reason for rejection of the Union's final offer.

The Employer requests that the arbitrator select its final offer in the instant dispute.

DISCUSSION:

The Union's final offer of 5 percent effective January 1, 1982 and 4 percent effective July 1, 1982 represents a cost to the Employer of 7 percent for the year and a year-end increase in salaries of 9 percent. The Employer's final offer of 4 percent effective January 1, 1982 and 4 percent effective July 1, 1982 represents a cost to the Employer of 6 percent for the year and a year-end increase in salaries of 8 percent. The difference in annualized costs as well as year-end salaries is one percent.

There is no dispute concerning the fact that both the Union's final offer and the City's final offer are below both the voluntary settlements arrived at in comparable units for 1982 as well as below the final offers of the parties in those disputes which have been submitted to arbitration for 1982.

This is a classic case of confrontation between the statutory criteria. Section 111.70(4)(cm)7, Wis. Stats., directs the arbitrator to consider eight criteria including:

"c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.

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

Not surprisingly, the City relies upon criteria "c" and "e," while the Union relies upon "d."

While the Employer does not contend it is unable to finance the Union's final offer, the Employer does argue it is

facing increasing financial difficulties and has taken several steps, including raising taxes substantially, to meet the problem. Additionally, the Employer notes it is facing a declining and aging population from which to secure its financing. The evidence supports the Employer's position regarding its taxing efforts, as well as other efforts, to finance the costs of its operations. The Employer further notes that the rise in the cost of living has slowed significantly during the last year.

Although it does not dispute the Employer's assertions as to its financial condition, the Union argues it has recognized the Employer's plight by submitting a final offer well below the voluntary settlements among comparables and below the final offers submitted by comparables in arbitration. The evidence clearly supports the Union's contention in this regard.

This case is somewhat unusual in that both parties agree the Employer should not have to meet the established settlement pattern. Essentially the issue is how far below the established settlement pattern should the settlement be.

The annual increase for those comparable communities that have settled with their fire fighters appears to be 9.458 percent. This is in comparison to the Union's final offer which would yield a 7 percent actual increase and the Employer's final offer which would yield a 6 percent actual increase. The year-end average increase in rates among the comparables appears to be 10.58 percent compared to the Union's final offer of 9 percent and the Employer's final offer of 8 percent. In earnings, the Union's final offer is 2.458 percent below the average settlement costs, while the Employer's is 3.458 percent below those costs.

While the undersigned recognizes the Employer's financial problems, it appears the Employer's final offer does indeed "ask too much, too quickly." The Union is cognizant of the Employer's financial problems; it has recognized those problems in its final offer and undoubtedly will do so in the future.

In the opinion of the undersigned the Union's final offer regarding wages for the 1982 agreement is the more reasonable final offer.

The remaining issue involves one additional holiday. In terms of the number of holidays granted, the Employer is at the mid-point of the comparables. It presently offers eight paid holidays. Given the financial difficulties confronting the Employer, the undersigned can find no basis for granting an additional holiday, especially considering the Employer's relative position compared to the comparables.


In the opinion of the undersigned the Employer's final offer of retaining the current holidays is the more reasonable offer.

The instant dispute turns on the relative weight to be given the disputed issues of wages and an additional holiday. While the undersigned recognizes that granting an additional holiday has a lasting impact upon the Employer, the Union's recognition of the Employer's financial condition has ramifications transcending this agreement. Recognition of the Employer's financial condition, which manifests itself in the Union's final offer being below the settlement pattern, will undoubtedly continue. Under the circumstances, it is the opinion of the undersigned that the Union's final offer is the more reasonable of the final offers.

After having given due consideration to the statutory guidelines, the evidence, and the arguments, the undersigned makes the following

AWARD

That the stipulations of the parties and the Union's final offer be incorporated into the agreement effective January 1, 1982 through December 31, 1982.



Neil M. Gundermann, Arbitrator

Dated this 16th day
of December, 1982 at
Madison, Wisconsin.