

RECEIVED

MAR 24 1983

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

* * * * *

In the Matter of an Arbitration
between

THE CITY OF MARSHFIELD

and

MARSHFIELD FIRE FIGHTERS LOCAL 1021,
INTERNATIONAL ASSOCIATION OF FIRE
FIGHTERS, AFL-CIO, CLC

* * * * *

No. 29512 MIA-666

Decision No. 19996-A

Appearances:

Mr. Dean Dietrich, Attorney, Mulcahy & Wherry;
Chief Clayton Simonson; Chief Edward Durkin;
Chief Harold Munson; Mr. John Krueger, Personnel
Director; for the City.

Mr. Leroy Waite, I.A.F.F. 5th District Vice President;
Mr. Bernie Binning, I.A.F.F. Local 1021; for the
Union.

Mr. Neil M. Gundermann, Arbitrator.

ARBITRATION AWARD

The City of Marshfield, Wisconsin, hereinafter referred to as the City, and Marshfield Fire Fighters Local 1021, International Association of Fire Fighters, AFL-CIO, CLC, hereinafter referred to as the Union, were unable to reach an agreement on the terms of a new contract. After an investigation by the Wisconsin Employment Relations Commission an impasse was declared and the undersigned was selected to serve as arbitrator in the matter. An arbitration hearing was held on January 6, 1983 in Marshfield, Wisconsin, and the parties filed post-hearing briefs.

FINAL OFFERS OF THE PARTIES:

1. Salary for 1982

<u>Position</u>	<u>City Annual Pay</u>	<u>Assoc. Annual Pay</u>
Captain	\$20,748	\$20,748
Lieutenant	20,170	20,170
Firefighter III	18,347	18,238
Firefighter II	17,818	17,818
Firefighter I	17,384	17,384
Recruit Firefighter	16,635	16,635

2. Duty Day

City's Offer: Retain status quo.

Association's Offer:

"The duty day shall terminate for all purposes of clean up, training procedures and other regular routines on or before 5:00 p.m.

"The balance of the twenty-four (24) hour period shall be spent in standing - by awaiting and/or serving in matters of emergency and occasional public relations demonstrations as may be reasonably required."

3. Maintenance and Servicing of Property

Association's Offer:

"Maintenance and servicing of equipment, vehicles and other City property after 5:00 p.m. shall be limited solely to items necessary for efficient response to alarms. Apparatus room floors should be made reasonably safe and dry in all areas utilized by men in response to alarms. Normal vehicle and house clean-up will be postponed to the following day crew."

4. Work Cycle

City's Offer: Amend paragraph 3 of Article VII to read as follows:

"The cycle of work shall be twenty-four (24) hours on duty, twenty-four (24) hours off duty, twenty-four (24) hours on duty, twenty-four (24) hours off duty, twenty-four (24) hours on duty and ninety-six (96) hours off duty. Shift changes shall be made at 8:00 a.m. each day."

Association's Offer: Amend paragraph 3 of Article VII to read:

"The cycle of work shall be twenty-four (24) hours on duty, twenty-four (24) hours off duty, twenty-four (24) hours on duty and seventy-two (72) hours off duty. Shift changes shall be made at 8:00 a.m. each day."

CITY'S POSITION:

It is the City's position that its final offer is the more reasonable offer presently before the arbitrator. It is argued by the City that its proposal to go from a two-platoon system to a three-platoon system is supported by the evidence, and the City has met the burden of proof required to make such change. The transition to a three-platoon system can, according to the City, be appropriately characterized as "minor" since it involves no additional hours of work, no alteration in an employe's ability to schedule vacations, paid holiday time or to trade shifts, nor does it in any other manner affect the hours of work or compensation offered by the City to the Union. However, the new system of scheduling will allow for substantially improved systems of operation in the Department. The new schedule will better allow continuity in the work force complement, supervision, training and assignment of tasks.

Under the current two-platoon system the complement of thirty employes is divided into two shifts of fifteen men each. These shifts are further divided into three kelly sections of five men each. Under the current schedule either shift one or shift two is, in part, on duty on any given day. One group of

five employes, designated as a "kelly section," will be off on any scheduled work day. As a result of the two-platoon system with the kelly sections various employes within a shift work together at various times. Additionally, the captains and lieutenants are not always supervising the same group of employes.

Under the City's proposal the thirty men would be divided into three platoons of ten men each, including captains and lieutenants. Under the three-platoon system the employes would regularly work together during their shift. Under the two-platoon system the employes are rotating, based on the kelly sections, between shifts and there is no continuity to the work force on any given shift.

One of the benefits of the three-platoon system is uniform and simultaneous training of the work force in groups. Under the current two-platoon system, employes may work on several different pieces of equipment and assume a variety of job responsibilities because the person who "normally" runs the equipment is off duty due to a kelly day. This method constitutes "ad hoc" training under the supervision of a rotating officer who may not normally supervise the particular employe. In contrast, under the three-platoon schedule, employes will continue to be given training opportunities but will gain their experience on the different kinds of equipment under circumstances which are better directed and controlled due to the presence of the same cadre of employes and officers when a given duty shift is scheduled to work.

The evidence establishes that in a three-platoon system fire fighters would be working together uniformly for ten shifts a month, whereas in a two-platoon system they work together for only five shifts a month. The continuum of men working together will only be broken by minor and unavoidable disruptions due to sickness, vacations, holidays or voluntary time trades.

Another important benefit of the change in the work schedule is that a uniform command structure can be maintained to supervise each platoon. Currently the men on one shift rotate through two different commanders who supervise three different groupings of employes.

An additional benefit is the shift officer's ability to assign the more experienced and better trained fire fighters to the critical positions on the equipment. Since these men would work together a greater percent of time, they would be able to fill a particular position in the Department for a greater percentage of time. In addition, under the three-platoon system, officers would not be bypassed in the chain of command in receiving or issuing orders because of their off-duty status. The safety of fire fighters is enhanced due to team work, and the introduction of the three-platoon system would provide for more consistent team work.

Another benefit to be derived from the three-platoon system would be the assignment of inspection responsibilities, as a certain number of fire fighters in each platoon would be designated as inspectors and would consistently perform the inspection duties.

Responsibility for equipment maintenance would also be centralized. If the manpower were divided into three platoons, specific personnel in each platoon could be assigned to the maintenance of the equipment.

The vacation benefits under the three-platoon system would provide for more consecutive days off than under the two-platoon system. Under a three-platoon system fire fighters would be better able to maximize use of their vacation time by combining it with scheduled days off. Similarly, the paid holidays, which employees are allowed as time off, could be scheduled in conjunction with regularly scheduled off-duty days so as to maximize the amount of consecutive time off throughout the year.

According to the City, there is overwhelming evidence to establish the broad use of the three-platoon system. Among the nine paid full-time departments most comparable to the City, eight currently operate on a three-platoon system, and seven of the nine operate under exactly the same work schedule proposed by the City: Chippewa Falls, Eau Claire, La Crosse, Merrill, Rhinelander, Stevens Point and Wausau. One city, Antigo, operates on a two-platoon system however, unlike the City, it does not provide ambulance service. In reviewing the data from a broader base selection of communities, all of the twenty-six cities and villages surveyed utilize a three-platoon system. Of those twenty-six cities and villages, fifteen operate under the schedule proposed by the City.

The City contends it has demonstrated that under criteria (d) which requires comparisons with public employees performing similar duties in comparable communities, the clear preponderance of the evidence compels the conclusion that its final offer on this issue is fair and reasonable.

The Union has raised two fundamental arguments against conversion to the three-platoon system. The first argument is that employees could be "called back" to work immediately preceding or immediately following a normal twenty-four hour work shift. The City contends no data has been presented by the Association to substantiate such assertion. The City does not have a history of call-backs for full twenty-four duty days. Sworn testimony by Chief Simonson establishes that on only two occasions in 1982 did men work two full twenty-four hour consecutive work shifts. All of the other overtime was of a short duration due to the temporary absence of other personnel from the station.

The argument also presumes that call-backs are routinely necessary due to a basic manning shortage in the Department, however this has not been proven. In fact, the call-backs in the past for reasons of manning shortages have been limited. Additionally, under a two-platoon system as well as under a three-platoon system, a voluntary trade between two fire fighters of similar rank could require one individual to work two, twenty-four hour shifts consecutively.

The second objection raised by the Union was that of "morale" due to the inconvenience of the schedule change. While the City does not diminish the need for good morale among fire fighting forces, under the three-platoon system, once it is implemented and the minor inconveniences due to the transition are overcome, better morale will result.

According to the City, no evidence has been presented on the record in support of the fire fighters' proposal to restrict the duty day to hours worked prior to 5 p.m. of the duty day. The record is bereft of any evidence either with respect to the current practices within the Department or similar language contained in contracts of comparable departments which would support

this demand. While the Union characterized its proposal as an attempt to "codify the current practice" within the Department, the City submits the record is devoid of any data that would support such allegation.

Additionally, a careful reading of the Union's proposal poses some serious questions for the management of the Department. First, a literal reading would prohibit any night training for members of the Department despite the fact that fire and ambulance calls occur during the evening hours and fire fighters should be adequately trained for dealing with these types of situations. Second, while the language does provide for emergency or occasional public relations, "as may be reasonably required," the term "reasonably required" is subject to interpretation and could lead to grievances for work required after 5 p.m.

In the Maintenance and Servicing of Property portion of the Association's proposal, maintenance and servicing of equipment is limited solely to activity "necessary for efficient response to alarm." In addition, the "apparatus room floor shall be made reasonably safe and dry." Again, the standards of "efficient" and "reasonable" are subject to challenge.

The Union has not demonstrated any abuse or prevalent practices within the Department which would require that stringent language be placed in the contract to curb the excesses of management on work assignments. The decision as to which duties must be accomplished and the time for accomplishment must be reserved to command officers who have responsibility for the safety of the men and the citizens. This proposal is without support by any standard of proof and must be rejected by the arbitrator.

The City contends that its wage offer is certainly a reasonable offer when one considers the overall compensation afforded the City's fire fighters. An examination of the average monthly rates paid among the most comparable fire departments in comparison to those offered by the City illustrates that the City significantly improves its position vis-a-vis the average in 1982. The City argues the percentage increase offered by it is far superior to the average percentage increase afforded among the comparable employers for 1982. The City contends it has established unequivocally that the base wage position of the City's fire fighters is highly competitive with other comparable fire departments.

Additionally, the City notes that its final offer far exceeds the increases in the CPI as well as private sector settlement levels and meets other public settlement levels for 1982. A close scrutiny of the actual contract costs under the City's and Union's offers reveals a wage increase by the City of 10.25% on the average, and a total impact of 11.96%. This contrasts with the Union's offer which represents a 9.5% increase and 11.44% total impact. The Consumer Price Index at the time of the hearing was 4.6% on an annual basis (U.S. City Average All Items Consumer Price Index), while inflation was measured at 5.9% under the PCE.

The City further notes its wage offer to the Union exceeds the wages offered to all other City employe groups. All other City employes received 9.5% across-the-board increase for 1982, while the City's offer to the fire fighters was 9.5% across-the-board increase with the exception of the Firefighter III category

which received a 10.15% across-the-board increase. Therefore, on the basis of internal comparables with other employe groups within the City, the City's offer is clearly more reasonable.

For all of the above reasons the City respectfully requests that the arbitrator award its final offer.

UNION'S POSITION:

It is the Union's position that its final offer is the more reasonable offer before the arbitrator. The Union emphasizes that its final offer would maintain the status quo, while the City is seeking to change it. The work week schedule currently in effect has been in effect since 1972. It is noted by the Union that the work schedule was negotiated, and if there were major problems they would have surfaced before eight to ten years had passed.

While the Union admits that it has a unique schedule compared to other work week schedules, it further notes that every department has something that is unique only to that department. Most other departments went to the three-platoon system to get reduced hours, not because they found the two-platoon system to be inadequate. In the instant dispute the City, and the Chief in particular, really did not even know what the chain of command would be.

The Chief referred to vacation, trades, and the hiring back on overtime with very strong emphasis placed on team work. The fire fighters feel they have two very strong teams, and even though all of the team does not work together at the same time, the members of a shift work together constantly and know exactly what each fire fighter's job is. The City introduced evidence indicating that on January 10, 1982, four trades were made. The Union notes that under the present system those four fire fighters were still with their own team or shift, whereas under the three-platoon system half of the crew would have been members of a different platoon. When the officer in charge trades a day, (such as on January 4, 1982,) the officer still works with his shift and does not have all members of a different shift working under him as he would on a three-platoon system. The Union submits it would dramatically change the working conditions of the fire fighters if the City were to prevail.

The City has failed to show in any way where a change in work schedule would improve the fire fighting capabilities or fire fighter efficiency and service to the people of the City. In fact, if it became necessary to order a fire fighter in on overtime to work forty-eight hours straight, it would lead to less efficiency because of reduced morale throughout the Department. In 1982, ninety-five full twenty-four hour shifts were worked back. At the rate of nine days per month, which would require a forty-eight hour work shift, this would cause twenty-eight days per year that the Chief may have to order fire fighters to work back. This, the Union submits, would have an impact on both the fire fighters who would be ordered to stay for another twenty-four hours, without breakfast, as well as on the family of the fire fighter who is expecting him to return home at 8 a.m.

According to the Union, the three-platoon system does not give the City any more manpower or hours of work, and in fact tends to lessen the manpower for emergencies because of more continuous time off.

Under the present system, a wife can expect that at least every other Sunday she can plan a family outing, whereas under the three-platoon system there will be three Sundays in a row that the fire fighter will be working. No change in work schedule should be made unless the City can show an overwhelming benefit to the City. The Union submits the City has failed to do so.

It is emphasized by the Union that there has never been an arbitration decision to change a work week other than the one referred to by Chief Durkin, and that was a grievance arbitration whereby the City arbitrarily changed the work schedule without negotiation. The arbitrator in that case ordered the City to revert to the schedule previously in effect.

The active duty hours and stand-by duty hours requested by the Union are simply a practice the Department has had for years. These two articles simply enter the working conditions into the collective bargaining agreement. There was no testimony by either side, therefore it must not be a problem to the Employer.

As to the issue of wages, the Union emphasized that the City is offering more than the Union is seeking, therefore there is obviously no issue regarding wages.

The Union asserts the work week is the main issue and it would seem that the proper way to make any change in the work week would be through negotiations unless there is overwhelming evidence that it would benefit the fire service. No such evidence was introduced by the City. In fact, the Chief's testimony shows that it creates new problems for both the Employer and the fire fighters.

In concluding its arguments the Union contends its final offer is the more reasonable of the offers currently before the arbitrator and therefore should be awarded.

DISCUSSION:

Although there are four issues in dispute in this case, including Work Cycle, Salaries, Duty Day, and Maintenance and Servicing of Property, the issue which has received the greatest attention, and is presumably the most significant to the parties, is the issue of Work Cycle. The City is seeking a change from a two-platoon system to a three-platoon system, and the Union is opposed to such change.

Whenever a party in interest arbitration seeks to change the status quo, that party has the burden of establishing the need for the change. In the instant dispute the City argues that if its final offer is accepted, and it is permitted to go to the three-platoon system, the efficiency of the Department, hence the fire protection available to the City, will be improved. The Union disputes the City's assertion.

Essentially the City argues that the three-platoon system will provide a continuity within the work force not attainable under the two-platoon system. The same fire fighters will be working together regularly under the same officers, which will result in a continuity of assignments, training and supervision not presently experienced. It is difficult to argue with the City's reasoning.

Under the two-platoon system each platoon is divided into three kelly sections. Two of the kelly sections work each day the platoon is scheduled to work, with the third kelly section being off. Effectively there are six sections under the two-platoon system, whereas there are three sections under the three-platoon system. Clearly, the three-platoon system would provide greater continuity in the work force, training and supervision. Obviously, these are legitimate goals of management as it ultimately should result in better fire protection to the community.

While it is argued by the Union that those departments that went to a three-platoon system did so to secure reduced hours, it is readily apparent that a reduction in hours could be achieved while maintaining the two-platoon system, which the City did. The fact that the great preponderance of the departments went to the three-platoon system suggests other factors were also considered. It is undoubtedly true, as noted by the Union, that each department has certain things which are unique to that department. However, the evidence suggests that the work cycle is not one of the unique factors, as the majority of the departments have a three-platoon system.

The adoption of the three-platoon system will not increase the hours of work or materially change the work performed by the fire fighters. Nonetheless, the three-platoon system will have an impact on the fire fighters, especially in their scheduled days off. Certainly consideration must be given to the wishes of the employes when considering an issue relating to work schedules. Under the three-platoon system the fire fighters may not have every other Sunday off as they currently do. Those who have outside employment may be required to make adjustments or even be forced to quit their employment. These are legitimate concerns of the fire fighters, as is their concern about having to work forty-eight consecutive hours. Despite these legitimate concerns, it must be kept in mind that the purpose of the Department is to meet the needs of the community, and if the needs can be better met by the use of the three-platoon system then that is the system which should be utilized.

It is noted by the Union that there is no assurance the goals outlined by the City will be accomplished if the three-platoon system is adopted. While this is true, it seems reasonable to at least afford the City the opportunity of accomplishing its goals and this can only be done by trying the three-platoon system. If, as the Union apparently believes, no significant benefits will be derived from the three-platoon system, the Union would have a valid argument for returning to the two-platoon system.

The Union has included in its final offer two amendments to Article VII, one entitled "Duty Pay," and the other entitled "Maintenance and Servicing of Property." The "Duty Day" provision reads as follows:

"The duty day shall terminate for all purposes of clean up, training procedures and other regular routines on or before 5:00 p.m. The balance of the twenty-four (24) hour period shall be spend in standing - by awaiting and/or serving in matters of emergency and occasional public relations demonstrations as may be reasonably required."

Essentially the provision limits the duty day for purposes of clean-up, training and other regular routines by prohibiting such activities after 5 p.m. According to the Union, this is the current practice and the Union is simply seeking to incorporate the practice into the agreement. There is little, if any, evidence in the record to establish that this is the practice, however there is no reason to dispute the Union's assertion. If, however, such provision were inserted into the agreement, the City would effectively be precluded from conducting any training after 5 p.m. under any circumstances. Such language appears to be unduly restrictive, especially considering the fact the City has not abused its current right to require work after 5 p.m. Additionally, the Union has not established that such language is contained in a significant number of other agreements. Under the circumstances the Union has not met its burden in seeking the addition to the collective bargaining agreement.

The provision entitled "Maintenance and Servicing of Property" reads as follows:

"Maintenance and servicing of equipment, vehicles and other City property after 5:00 p.m. shall be limited solely to items necessary for efficient response to alarms. Apparatus room floors should be made reasonably safe and dry in all areas utilized by men in response to alarms. Normal vehicle and house clean-up will be postponed to the following day crew."

This provision, as in the case of the "Duty Day" provision, is apparently intended to limit the work day to before 5 p.m. The provision does permit maintenance and servicing of equipment necessary to the efficient response to alarms after 5 p.m. The Union has demonstrated no particular need for this provision; there is no contention that the City has misused or abused its rights regarding the maintenance or servicing of equipment. Additionally, there is no evidence that such limitation is found generally in collective bargaining agreements. In the absence of such showing it must be concluded the Union has not met its burden for incorporating such language into the collective bargaining agreement.

The remaining issue is that of salaries and there is really no dispute regarding salaries as the City has offered more in its final offer than is being sought by the Union.

As previously noted, the most significant issue in this case is the work cycle. While the Union argues that such a change should be made through negotiations unless there is overwhelming evidence that it would benefit the Department, in the opinion of the undersigned, the City has introduced sufficient evidence to justify its proposed change in the work cycle. If, after a period of time, sufficient benefits are not derived, the Union may well seek a return to the present work cycle.

The undersigned, having given due consideration to the statutory criteria, renders the following

AWARD

That the City's final offer be incorporated into the 1982 agreement as well as all stipulations arrived at between the parties.

Dated March 22, 1983
at Madison, WI.

Neil M. Gundermann, Arbitrator