STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Arbitration Between	:	Case 40 No. 36273 MIA-1076 Decision No. 23374-A
RHINELANDER FIREFIGHTERS, LOCAL 1028, I.A.F.F., AFL-CIO	:	
and	:	Sharon K. Imes Arbitrator
CITY OF RHINELANDER	:	

APPEARANCES:

LeRoy Waite, Fifth District Vice-President, International Association of Firefighters and Donald L. Knutson, President, Local 1028, I.A.F.F., appearing on behalf of the Rhinelander Firefighters, Local 1028, I.A.F.F., AFL-CIO.

Phillip I. Parkinson, City Attorney, appearing on behalf of the City of Rhinelander.

ARBITRATION HEARING BACKGROUND AND JURISDICTION:

On March 27, 1986, the undersigned was notified by the Wisconsin Employment Relations Commission of appointment as arbitrator under Section 111.77(4)(b) of the Municipal Employment Relations Actin the matter of impasse identified above. Pursuant to statutory requirement, the undersigned is limited in jurisdiction to the selection of either the entire final offer of the Rhinelander Firefighters, Local 1028, I.A.F.F., AFL-CIO, hereinafter referred to as the Association, or that of the City of Rhinelander, hereinafter referred to as the City or the Employer. Hearing, preceded by unsuccessful mediation, was conducted on May 20, 1986 at Rhinelander, Wisconsin during which time the parties were given full opportunity to present relevant evidence and make oral argument. Post hearing briefs were filed with and exchanged through the arbitrator on June 24, 1986.

THE FINAL OFFERS:

The remaining issues at impasse between the parties concern the length of the work week and compensation. The final offers of the parties are attached as Appendix "A" and "B".

STATUTORY CRITERIA:

Under the Municipal Employment Relations Act, the undersigned is required to choose the entire final offer of one of the parties on the unresolved issues after giving consideration to the criteria identified in Section 111.77 (6), Wis. Stats..

THE POSITION OF THE PARTIES:

The Employer offers a work week shortened to 53 hours per week in order to reduce the need to provide overtime compensation under the Federal Labor Standards Act (FLSA), as it was amended in November, 1985. Stating the "primary purpose of that law is to reduce the work week for all employees...." and that "computing and paying overtime are enough of a management problem to greatly encourage the creation of a work week which does not routinely demand overtime payments as required by FLSA," the City argues it is just a matter of time before all cities in the State of Wisconsin will replace the firefighters' predominant 56 hour work week with a 53 hour work week or less. Recognizing others have not yet addressed the issue, the City continues that it is better to face the issue head on now in order to resolve the problem than it is to confront it in future arbitrations.

The City posits the FLSA has only sped along its trend of reducing hours of work for firefighters which has existed since 1953. In support of its position it cites a reduction of hours in 1953, one in 1965 and another in 1974 or 1975.

Continuing that manpower is not a bargainable issue, the City rejects the firefighters' argument concerning the effect of a reduction in hours. Stating crew size is a management prerogative, the City declares any arguments advanced by the firefighters in regard to crew size should be "given no weight or effect."

Finally, acknowledging it has settled wages with three of its bargaining units, the City argues its offer is equivalent to that agreed upon with the other units. Declaring that the reduction in hours and maintenance of the same monthly salary is equivalent to the 5% wage increase it has granted its other employees, the City argues the cost of monthly salaries at the 1985 wage rate, with the reduction in hours, constitutes a 5.7 percent increase in hourly pay. It adds that although this increase will not result in more take-home pay, there is an actual increase in take-home compensation since the City's proposal increases the 1985 wage rate by 5% from January 1 until April 15 when the FLSA standards take affect and since overtime will be paid for for the additional hours over 53 worked between April 15 and the time of the arbitration decision.

The Association posits its offer should be implemented since it is the same offer for which other bargaining units within the City have settled. Stating this is "a rather unique case" since both sides agree a 5% package is acceptable and it is the same package the other City employees have received, the Association contends there is no need to consider criterion such as cost of living; the City's ability to pay; parity or comparisons with area wages and fringe benefits. Declaring the only issue is how the FLSA should be costed, the Association argues its offer is more reasonable since it more closely approximates the pay increase received by the other employees within the City and it more closely approximates the method of compensation agreed upon by the majority of fire departments within the state.

Explaining the California plan and the resulting overtime which will occur with the implementation of the 1985 FLSA amendments, the Association expresses its concern both for the cost of implementation of the City's offer and the affect it will have on manpower. It argues that the City's proposal will actually be more costly since it will result in greater overtime than that which currently exists and that a 53 hour work week will have a greater impact upon the size of the crew than the current 56 hour work week has. In addition, it argues that in the past, when the work week hours have been reduced, it was done with no commensurate decrease in pay but an increase in the rate as is the standard which has occurred with the increases in other fire departments across the state. Consequently, it believes the City's proposal, which provides for no increase in pay with a reduction in hours, is less than desirable, particularly since a survey of 53 other firefighter locals indicates no other City settled in this manner.

Finally, the Association states its offer is reasonable since it proposes a decrease in the percent of pay increase after April 15 in order to compensate for the overtime which will accrue when the FLSA standards take affect, a position no other firefighter local has taken. Further, it concludes its 3.4% increase after April 15 will result in the same overall 5% increase as the other City employees have received, thus, there is no reason to implement the City's offer.

DISCUSSION:

After reviewing the evidence and the arguments of the parties, it is concluded the final offer of the Association should be implemented. Although the Fair Labor Standards Act amendments may result in the need for employers to reduce the number of hours worked by firefighters in the future, there is no indication that there is an immediate need to change the number of hours work; there is no indication that other employers, whom the City feels are comparable, feel the need to reduce the hours, despite the FLSA changes, for 1986 and there is no indication the final offer of the Association will result in any greater increase in cost for the Employer than it was willing to agree upon with its other employees. Consequently, the Employer is not able to meet the burden of proof necessary to demonstate there is need to change, through arbitration, the status quo relative to the hours currently worked.

There is merit in both parties' offers and both are reasonable since the increase in wages per hour would be approximately the same under either offer. The difference in the proposals lies essentially in whether or not the work week should consist of 53 hours or 56 hours. Consequently, in determining which offer should be implemented, it must be determined there is reason persuasive enough to cause a change in the status quo which, in this instance, is a 56 hour work week.

The Employer is correct in that if the hours of work are reduced, the rate of pay per hour will increase and perhaps that increase will be equivalent to the 5.7% increase which the Employer indicates will occur. The fact is, however, that the Association is not seeking a reduction in hours and its proposal also provides an approximate 5% increase in wages per hour. The difference between these two proposals is that the Association's offer will result in out-of-pocket costs to the City. Under the City's offer, while the employees would realize an increase in the rate of pay, there would be no actual increase in compensation and no actual increase in the cost to the Employer since the increase comes about as the result of reducing hours worked. Under the Association's offer, there would be an increase in the rate of pay and an increase in the cost to the City since there would be no reduction in hours. The increase, however, would be no more than the increase which was settled upon by the City and its other employees. Consequently, on the basis of internal settlements, it is determined both offers are reasonable.

The sole argument advanced by the Employer for reducing the hours and providing no increase in the wage rate is that the FLSA intends employees to work fewer hours. There is nothing in the law which states the employee may work only a limited number of hours. The law more specifically requires that overtime be paid for hours in excess of a certain number. This, in itself, is not sufficient cause to reduce employee hours through arbitration. Further, when this argument is compared to what other employers whom the City feels is comparable have done, there is no indication that other employers feel there is an immediate need to reduce the number of hours worked since all of the comparable communities have a work week of 56 hours or more. Thus, based upon a demonstrated need to change work hours, it is concluded that the argument advanced by the Employer is not persuasive enough to award a change in hours through arbitration.

In arriving at this decision, no merit was given to the effect of the offers on crew size. The City is correct in that this issue is not a bargainable issue expect as it impacts upon the work load of the employees. Consequently, it was given no weight.

The following decision is based upon review of the evidence and arguments presented and upon the relevancy of the data to the statutory criteria as stated in the above discussion. Accordingly, the undersigned issues the following

AWARD

The final offer of the Association, attached as Appendix "A", together with the stipulations of the parties which reflect prior agreements in bargaining, as well as those provisions of the predecessor agreement which remained unchanged during the course of bargaining, shall be incorporated into the 1986 collective bargaining agreement as required by statute.

Dated this 8th day of September, 1986 at La Crosse, Wisconsin.

Sharon K. Imes
Arbitrator

SKI:ms

Appendix "A"

2/27/86

Final Offer

1985 contract remains the same for 1986. except for wages.

Effective January 1, 1986 to April 14, 1986 we receive a 5 o/o wage increase.

Effective April 15, 1986 this 5 o/o increase is reduced to 3 4 o/o for the balance of the year, in order to comply with the Fair Labor Standards Act

Local 1028 Bargaining Committee

Donald L. Knutson, Chairman
Gordon Gilman
Dale Lefay
Stew Sommers

Appendix "B"

City of Rhinelander's Final Offer

The City of Rhinelander proposes that the 1986 working agreement for the Rhinelander Firefighters be modified as follows:

Modify Article 11, Rank and Salary Schedule, effective January 1, 1986. Each wage step per month shall be increased 5% over the 1985 contract amount. This 5% increase will last until April 14, 1986. Effective April 15, 1986 the wage step per month will revert to the wage step contained in the 1985 working agreement. On April 15, 1986 Article 7, Pay Procedures, Paragraph B, Tour of Duty, will be modified to provide for a 53-hour work week averaged over a twenty-seven (27) day period. The normal tour of duty of the three fire dept. crews will remain as stated in Paragraph B, but during each 27 day cycle each officer will have one of the 24-hour tour of duties reduced to 12 hours. The work day reduced will be the third 24-hour work day, the last 12 hours prior to the four 24-hour tours off.

Dated this 27th day of February, 1986.

CITY OF RHINELANDER

Philip I. Parkinson
City Attorney

EXHIBIT 1