STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of	*	
CITY OF MARSHFIELD	*	Case 72 No. 38557
For Final and Binding Arbitration Involving Firefighting Personnel in the Employ of	*	MIA - 1222 Decision No. 24575-A
CITY OF MARSHFIELD	*	

APPEARANCES:

Ronald Steltenpohl, President, Local 1021, I.A.F.F.
on behalf of the Association

Dean R. Dietrich, Mulcahy & Sherry, S.C.,
on behalf of the City of Marshfield

INTRODUCTION

On July 6, 1987, the Wisconsin Employment Relations Commission (WERC) appointed the undersigned to act as Arbitrator pursuant to Section 111.77 of the Municipal Employment Relations Act (MERA) in the dispute existing between the City of Marshfield (hereinafter the "Employer" or "City") and Local 1021, International Association of Firefighters, AFSCME, AFL-CIO (hereinafter the "Union" or "Association"). On August 13, 1987, an arbitration hearing was held between the parties pursuant to statutory requirements and the parties agreed to submit briefs and reply briefs. Briefing was completed on October 2, 1987. This arbitration award is based upon a review of the evidence, exhibits and arguments, utilizing the criteria set forth in Section 111.77 (6), Wis. Stats. (1985).

ISSUES

Although both final offers here have a wage component, the only item at issue is the Union's demand for a retirement sick leave benefit. If that demand is granted, the wage component will fall into place.

THE FIRE FIGHTERS' POSITION

The Union has had a retirement sick-leave proposal on the bargaining table since 1980. The issue has even reached the arbitration stage at least once, in 1986, and is raised again here because the parties have been unable to arrive at an agreement through the bargaining process.

COST

The Firefighters argue that the cost of the benefit requested would be minimal to the City over the employment life of the bargaining unit's members. It further maintains that the cost will be largely offset by the Union's offer of a wage increase lower than that offered here by the Employer, a sum of money that is unlikely to be made up by the members during their employment by the City.

THE BENEFIT

This benefit is not unique to employees of the City of Marshfield or to comparable employers in surrounding cities or to other public and private employers in Marshfield.

Although there is wide varience among the plans, enough unit members and employees have some sort of sick-leave buy-out plan to require institution of such a plan for the benefit of the Marshfield Fire Fighters.

PRIOR AWARD

As remarked above, this issue has been submitted to binding arbitration before. In that prior award, it was indicated that the Union might have obtained a sick-leave payout had its offer:

(1) Contained a wage offer that was the same as the City's final offer or more similar than the one proposed by the Association; and

(2) Contained language that resulted in a clarification of its sick-leave payout proposal.

The Union argues that it has met the standards set forth earlier. Not only is its wage offer the same as the City's, it is similar in structure and lower in amount.

And the sick-leave payout proposal is clear in scope of the benefit and capable of easy determination. Although there is some dispute between the parties in exhibits and briefs, yet the disagreements apply only to how individual unit members' benefit might be computed. The scope of the benefit and its cost are easily understood.

The Fire Fighters therefore argue that they have met the burden which caused their benefit proposal to fail and that this arbitration must be decided in its favor.

THE CITY'S POSITION

The City has settled its wage increases with all other bargaining units. With the sole exception of the Police Department Support staff, all have agreed to a 3% wage adjustment. This is the same as that contained in its final offer here. No structure change appears to have been made in other units, and none is proposed here. Therefore, its wage offer is reasonable and capable of approval in arbitration.

It attacks the Union's sick leave benefit proposal on two grounds.

The first is that the proferred "buy-out" is insufficient. The Fire Fighters have made no undertaking to limit future wage demands. Although it has said the lost wages would never be recovered, it still has the right to ask for salary catch-up in the future thus depriving the Employer of any cost savings that might be achieved in this contract. The City maintains that the benefit cost reduction offered here does not give sufficient ground for acceptance of the Union's final offer.

Of equal importance is the acceptability of the sick leave payout proposal itself. It disputes the validity of the Union's comparables. It does not find the benefit requested to be comparable to that enjoyed by comparable units in its employ, nor does it agree that enough comparable units have any sick leave payout benefit at all to require its imposition here.

DISCUSSION

PRIOR ARBITRATION AWARDS

The union has developed a final offer that complies with the language contained in the 1986 arbitration award. Were that award precedent here, the Union must prevail.

However, the language of a previous award is not binding upon a succeeding arbitrator. Interest arbitration does not depend upon language alone but upon a multitude of considerations, most of which are set forth in the statute. Economic conditions change from year to year. New contracts are made with other bargaining units. Other language in the collective bargaining agreement may have been agreed to that would have an impact on the content of the final offer. In short, every interest arbitrator must decide a case based upon the statutory requirements alone, and prior awards offer no more than guidance and background to the person who must grant the next award.

COMPARABLES

Comparables come in groups. One group is employers and employees in comparable industries, professions or fields. Another is employees in separate bargaining units who share a single employer. Still another is groups of employees and employers who exist in a single geographical area.

The parties are in general agreement that the Marshfield Fire Fighters are comparable to fire fighters employed by the cities of Wausau, Wisconsin Rapids and Stevens Point. Because of the similarity of these units, they shall be considered the first comparable group here.

The second comparable group is those bargaining units who have contracts with the City of Marshfield. Here there is a dispute as to whether employees of the Electric and Water Utility should be considered employees of the City.

It appears that the Electric and Water Utility is a public entity but that it is separate from the City of Marshfield in much the same way that the Marshfield Board of Education and its employees are distinguishable. The Police, Department of Public Works and Wastewater employees are the only other unionized employees who bargain directly with the City, as do the Fire Fighters. They constitute the second comparable group.

All other unionized employees share only geographic proximity with the two parties here. They constitute a group of public and private employers and employees of widely differing work requirements. Because of this wide diversity, they must constitute the third, and least comparable, group.

THE SICK LEAVE PAYOUT BENEFIT

It is undisputed that this a new fringe benefit. It is also undisputed that the new fringe benefit will be costly. Although the Union maintains that its acceptance of a lower wage increase will substantially reduce the long-range cost of the benefit, that position is challenged by the City and it is that argument which has resulted in this arbitration.

Wisconsin interest arbitrators appear generally in agreement on how to address the new fringe question. The burden is on the moving party and that burden is severe. More so even than for other proposed alterations in contract language and terms.

This arbitrator subscribes to a three-fold test. The proposing party must show a compelling need. It must then show that the present contract language is unworkable in fulfilling that need, and that the new language will not impose an inequitable or unfair burden upon the opposing party.

Of these criteria, one is subject to objective analysis here. There is no sick leave payout benefit contained in the present collective bargaining agreement, so the present contract language is unworkable in fulfilling the need.

The other standards must be considered subjectively. As discussed above, the proposed language is clear and precise and is not subject to mis-interpretation. The parties have disagreed as to the costing of the benefit, but there is no dispute as to how it would be applied to each unit member when he or she becomes eligible to receive it.

The City has made no showing that it would be unable to pay the benefit. Rather, it has objected to the cost, arguing that the Union's concession on the wage issue will not sufficiently off-set the cost over the working life of the proposed beneficiaries.

A more substantive argument raised by the City is the effect of this new fringe benefit upon its relations with the other bargaining units in the City. It regards this as an opening wedge which will result in similar demands in negotiations from other city bargaining units.

The Union would rebut that position as being speculative at best. Furthermore, it argues that this is not a new fringe benefit, but only a modificatiion of a benefit already enjoyed by the City's largest single bargaining unit. The Fire Fighters estimate that the cost of the sick leave buy out per worker under the Street Department workers' labor agreement is higher than the projected per worker cost under this proposed language.

The City of Marshfield may not like institution of a sick-leave payout benefit. It may be costly, not only in terms of this employee unit but of other units. But it cannot be found that the proposed language imposes an inequitable burden or an unfair burden upon it. It can administer the language and pay the benefit. The fact that the benefit is unwanted does not suffice to prevent approval of the proposed language.

We turn now to the final criterion: "Compelling need." Dictionaries will differ slightly in their definition of the word "compel", but they are agreed that to be compelling a need must be so evident as to require or force a change in conditions. The question here is whether a compelling need exists.

A sick leave buy-out is surely an acceptable fringe benefit. Three of the four comparable fire fighter units have some sort of buy-out program. It might even be considered

to be a desireable fringe benefit. Yet there has been no showing here that the Marshfield fire department has been losing personnel to other fire departments or that it has experienced difficulties in recruiting satisfactory personnel. Although speculation is dangerous, conceivably a recruiting disadvantage would be an element that would work toward the negotiated adoption of such a fringe.

The proposed benefit is not the same as that enjoyed by comparable fire departments. Nor is it like the unlimited sick leave benefit contained in the Wisconsin Rapids contract. The Wisconsin Rapids benefit may in fact be more lucrative than that requested here, but it is surely not an unused sick leave bank payout.

We turn now to the other City of Marshfield employee units. Only one of the other units have any sort of sick leave buyout program. As indicated before, the Department of Public Works employees have a long-standing fringe benefit that pays them each year for up to 12 days un-used sick leave. The DPW workers are allowed to accumulate only 60 days of sick leave, as against 120 days for the Police or Wastewater employees and 90 24-hour days for the Fire Fighters. In effect, the DPW workers have exchanged an annual cash benefit for a lesser accumulation. Such a benefit may be more lucrative in an individual case than the benefit requested here. But, it is clear there is one thing it is not. It is not a sick leave buyout program tied to retirement. It is not similar to the fringe benefit requested in the Union's final offer.

DECISION

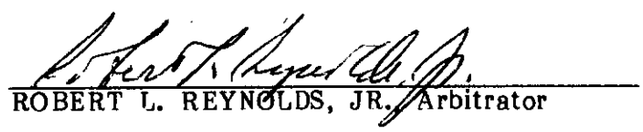
The City's brief quoted Arbitrator Zel Rice's award in City of Brookfield, Decision No. 19573-A (4/82). In that award, Mr. Rice stated, "A major change in fringe benefits (that) departs from the basic pattern of fringe benefits agreed upon by the other employees of the employer should not be achieved through the arbitration process unless there is a substantial inequity that is unfair or unreasonable or contrary to accepted standards (emphasis provided)."

The fringe benefit requested here is not universally contained in the fire fighter contracts in comparable cities. Nor has it become a part of the collecive bargaining agreements with any of the other employees of the employer. It is not enough to show, as the Union has here, that the benefit is reasonable. It may even be desireable. But, no showing has been made of the existence of a substantial inequity that compels acceptance of a new fringe benefit for the City of Marshfield Fire Fighters.

AWARD

The Final Offer of the City of Marshfield shall be incorporated into the collective bargaining agreement together with all changes stipulated to between the parties.

Dated this 22nd day of December, 1987 at Madison, Wisconsin.



ROBERT L. REYNOLDS, JR., Arbitrator