STATE OF WISCONSIN
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WAUWATOSA PROFESSIONAL FIRE FIGHTERS ASSOCIATION, LOCAL 1923,

and the

CITY OF WAUWATOSA.

ARBITRATOR'S DECISION AND AWARD
Case 95
No. 48534
MIA-1778
Decision No. 27869-A
Milo G. Flaten,
Arbitrator

BACKGROUND

Wauwatosa Professional Fire Fighters Association, Local 1923, of the International Association of Fire Fighters (hereafter, "the Union") and the City of Wauwatosa (hereafter, "the Employer") negotiated from the fall of 1992 through the summer of 1993 on a 3-year collective bargaining agreement ("Contract") covering the years 1993 through 1995. The bargaining representatives were attempting to agree on a successor Contract to one which had been in force between the parties during the years 1991 and 1992.

Finally, in August of 1993 the two sides, through their bargaining representatives, reached a tentative agreement on all outstanding issues and presented the resultant document to their respective principals for ratification and execution. The Union membership, however, voted not to confirm tentative agreement and the parties returned to the bargaining table. After more unsuccessful negotiating sessions thereafter, the Wisconsin Employment Relations Commission conducted an investigation and declared the parties to be at impasse. It ordered final and binding arbitration as it is empowered to do under state law. On January 31, 1994 the undersigned was appointed by the W.E.R.C. to

arbitrate the dispute and to issue a final and binding award on the matter pursuant to Sec. 111.77 of the Wisconsin Statutes, which covers disputes between law enforcement personnel and fire fighters.

Subsequently, a hearing was held in Wauwatosa, Wisconsin on May 17, 1994, at which the parties had the opportunity to present evidence, give testimony and make arguments. The hearing took one day to complete at which six witnesses testified and 111 exhibits were introduced into the record. The proceedings were duly recorded by a professional court reporter who produced 218 printed pages of Transcript of Testimony.

The parties, through their respective counsel, then prepared and submitted post-hearing briefs and reply briefs to the arbitrator following an agreed-to schedule.

Appearing for the Employer were Attorneys David B. Kern and Tia Tartaglione of Quarles & Brady, Milwaukee, Wisconsin, and for the Union were Attorney Timothy E. Hawks and John Kiel of Schneidman, Meyers, Dowling & Blumenfield, Milwaukee, Wisconsin.

SCOPE AND BASIS OF ARBITRATION

Under the terms of Sec. 111.77 of the Wisconsin Statutes, the parties are to submit their final offers to the arbitrator who shall select the final offer of one of them and shall issue an award incorporating that offer without modification. In determining which of the final offers to select, the arbitrator is to be governed by the following statutory criteria:

"(a) The lawful authority of the Employer.

(b) Stipulations of the parties.

(c) The interests and welfare of the public and the financial ability of the community to pay.

(d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees in similar services and with other employees generally:

1. In public employment in comparable communities.

2. In private employment in comparable communities.

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

(f) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

POSITIONS OF THE PARTIES

The Employer takes the position that its final offer is the more reasonable because it mirrors the tentative agreement reached by the parties prior to submitting this dispute to arbitration.

The Union takes the position that its membership wisely rejected the tentative Contract presented to it by its negotiating team. However, the Union urges that its final offer preserves the essential elements of the tentative Contract while at the same time responding to the demands of its membership.

Specifically, the Employer urges that the parties voluntarily negotiated a complete, tentative agreement which included all issues at hand. Yet, despite the fact that the Union bargaining committee is the statutory representative for the employees and is selected to do their bargaining by the members, the tentative agreement was rejected by the Union who "destroyed" the long-sought bargain. The Employer argues next that great deference should be given to the tentative Contract because there have been no new facts presented at the arbitration session which did not exist at the time of ratification.

On the other hand, the Union declares that its final offer actually preserved the essential elements of the tentative agreement. It points out that it did not change the essentials regarding wages, the insurance rebate concession, the eye examinations, the increase in employee co-insurance nor did it change the agreed-upon life insurance and "housekeeping" language revisions.

Additionally, the Union points out that its final offer continued to give up the $50.00 rebate offered in exchange for the rebate concession, the improvement in emergency medical technician premium pay, the educational incentive pay improvement, the vacation improvement and the Association Affairs improvement. In its final offer, however, the Union decided it could not concede on the issue of dependent care coverage, on making a drug co-pay deal, nor an alcohol/drug and mental health change.

Furthermore, the Union continues, in its final offer it could not agree to the Employer Work Rule concerning appearance on duty nor would it agree to the Employer job trade demands.

Therefore, in its final offer the Union decided that in light of the improvements it elected to "give up," it substituted three alternative improvements. They were:

1. An improvement in holiday pay of 12 hours instead of the 9 hours proposed by the Employer;

2. An improvement in Motor Pump Operator training provisions, that is, requesting compensation for three bargaining unit members who attended off-duty training;

3. An improvement in health insurance by proposing an optical hardware vision benefit.

In essence, the Union argues, its final offer did not rewrite the tentative agreement by adding numerous and expensive new demands. Instead, it actually tracked the tentative agreement.

To this, the Employer again points out that the parties voluntarily negotiated a complete, tentative agreement which

included all issues at hand. It reiterates that its final offer mirrors that tentative agreement which was so laboriously achieved.

Importanty, urges the Employer, its final offer includes an identical health insurance plan to that of all of the other internal bargaining units of the City, i.e., police and fire dispatchers, municipal employees, and non-supervisory policemen.

Because the tentative agreement abandoned a number of gains the Union would have realized if they had ratified it, and because some of the language changes or proposals in the tentative agreement were originally *Union* proposals, the Employer continues, and because many of the proposals in the tentative agreement attempted to accommodate the Union, specifically the work rules on appearance dealing with safety and civilian clothing, the Union's final offer is utterly inexplicable.

DISCUSSION

Several of the statutory criteria to be used by an arbitrator do not apply to this case. That is, while some of the parties' final offers are the same on a number of Contract changes, there were no specific stipulations, so that factor need not be discussed. Additionally, neither side claims that the Employer lacks lawful authority to implement either proposal nor do they argue that the Employer's financial ability to pay plays a role in this case. Likewise, the consumer price index does not appear to be a factor.

From the evidence and as the Union points out in its brief, it is apparent that the Union's membership was most disturbed about

two items when they failed to ratify the tentative agreement brought back to them by their bargaining team. They felt that the health insurance concessions ran too deep and they believed the Employer failed to demonstrate a crying need for detailed Work Rules changes ranging from earrings to work clothing to job-trading policies. Moreover, when they set out to modify the tentative agreement, the Union's final offer tended to preserve the overall cost to the Employer.

In failing to vote approval, the Union admittedly abandoned a number of gains its members would have realized if it had ratified the tentative agreement. Indeed, some of the changes in the tentative agreement regarding job-trading and Work Rule language on employee appearance were agreed upon to settle grievances. For instance, the change in rules on appearance permitting appropriate civilian clothes to be worn to and from work was agreed upon by the parties to settle a grievance which complained that fire fighters were required to wear their formal uniforms to and from work. The Union agreed to drop their grievance if this change was included in the tentative agreement. Thus, it appears likely that setting aside the tentative agreement could possibly lead to grievances on matters thought to be previously concluded.

Indeed, the tentative agreement contained a change in Work Rules which established a joint labor-management committee on uniforms which would have possibly eliminated future grievances in this regard.

This also appears to be the case in the language of the tentative agreement pertaining to both job trades and the Association Affairs provision which allows the Union President to be excused from duty to attend Employee Assistance Program Steering Committee meetings.

Both sides cited external comparables to support their cases. With regard to health insurance, the Employer drastically reduced the eligibility age for coverage of dependents by a full six years from 25 years to 19 years of age. Its final offer also proposed significant reductions in the number of days an employee can obtain inpatient treatment as well as a reduction in the outpatient maximum coverage. Additionally, the Union now objects to the reduction with respect to inpatient alcohol/drug treatment and mental health coverage which was called for in the tentative agreement.

It is generally held that when one side or another wishes to deviate from the terms of the previous collective bargaining agreement, the proponent of that change must fully justify its position and provide strong reasons and a proven need. Otherwise, an adequate *quid pro quo* should be offered to balance the change. Here, an employer offered an additional nine hours of holiday pay and a $50.00 EMT training bonus as compensation. The Union's bargaining team accepted the proferred *quid pro quo* in the tentative agreement, but it was rejected by the members in a ratification vote.

Although arbitrators have concluded that a final offer of a party should not be adopted *solely* by reason of the fact that there had been a prior tentative agreement by the bargaining teams of the parties, that tentative agreement must have contained a certain degree of reasonableness or the parties never would have agreed to it on a tentative basis in the first place. *City of Oshkosh (Public Library)*, WERC Dec. No. 24800 (Kerkman, 2/88); *Milwaukee Metropolitan Sewerage District*, WERC Dec. No. 24813 (Kerkman, 5/88). This is especially true when no new facts have been offered which did not exist at the time of the ratification and where the parties have negotiated for over a whole year. *City of Wauwatosa*, WERC Dec. No. 19760 (Petrie, 3/83); *Portage County Office and Professional Employees*, WERC Dec. No. 25654 (Stern, 11/88).

While the external comparables cited by the Union, communities similar in size, status and proximity, seem to compare favorably with the Union's final offer, it is important to note they do not when analyzed with the contiguous cities of Milwaukee, West Allis, Waukesha, Brookfield and Greenfield. The City of West Allis, especially, has been characterized as the most comparable city to Wauwatosa. *City of Wauwatosa Fire Department*, WERC Dec. No. 29511 (Petrie, 3/83). This observer must agree with that characterization.

However, it is with the internal comparables, i.e., all of the Employer's other bargaining units, that this observer attributes the most compelling importance. On health insurance, the Employer's final offer which was agreed to in the tentative

settlement is identical to the changes made with the other internal bargaining units in the City (police and fire dispatchers, municipal employees, and non-supervisory policemen). Importantly, the Employer has,historically,always had identical health insurance coverage under its basic health insurance plan for all its bargaining units.[1] The Union's final offer would have changed that pattern. It is important that municipalities, especially the size of the municipality at hand, should attempt to have consistency and equity in the treatment of its employees. Hard feelings are avoided when all city employees are treated alike. Deviations from an historically established pattern can be disruptive and have a negative impact on employee morale. *Douglas County Sheriff's Department*, WERC Dec. No. 27594 (Flaten, 8/93).

DECISION

After a careful consideration of all the statutory criteria and the entire record, it is apparent to this observer that the final offer of the Employer is the more appropriate of the two offers. While a persuasive case has been made that the Union's final offer compares advantageously with many of the external examples from other communities, it doesn't with all. On the other hand, the other bargaining units in the City all compare favorably with the Employer's final offer. The unratified, tentative agreement, which remains the City's final offer, was reached by experienced leaders from both sides ostensibly chosen because of

[1] This observer does not deem the refusal of the Union to participate in HMO plans to be of importance because the Union had previously rejected that benefit.

their knowledgeability on collective bargaining matters. It is apparent that both sides gave up certain things to achieve that tentative agreement. To change that now would be clearly unwise and would risk unrest from the other Unions in the Employer's city.

AWARD

Based on a careful consideration of the all evidence and the arguments, and all various arbitral criteria provided in Sec. 111.77(6) of the Wisconsin Statutes, it is the award of the impartial arbitrator that:

1. The final offer of the Employer, the City of Wauwatosa, is the more appropriate of the two final offers.

2. Accordingly, the Employer's final offer is hereby ordered to be implemented by the parties.

Dated: August 30, 1994

/s/

Milo G. Flaten, Arbitrator