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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

Case No. 359

No. 50319

MIA - 1868

Decision No. 28067-A

IN THE MATTER OF ARBITRATION

between

THE INTERNATIONAL ASSOCIATION
OF FIREFIGHTERS LOCAL 257

and

THE CITY OF APPLETON

BEFORE: ARVID ANDERSON
HEARING OFFICER

Appearances: For the Firefighters: Timothy E. Hawks, Esquire.

For the City: David F. Bill, Director of Personnel.

The undersigned was selected by the procedures of the Wisconsin Employment Relations Commission to resolve an impasse between the City and the Firefighters Local by final and binding interest arbitration based on a total package. A hearing was held in the City of Appleton on September 7, 1994 at which time the parties presented sworn testimony, evidence and argument. Thereafter they submitted post-hearing briefs and reply briefs, the last of which were received by the Arbitrator on October 24, 1994. After considering the entire record, the undersigned renders the following opinion and award.

Both parties presented numerous charts and data. The Arbitrator will only recite what he regards as the most relevant. The prior agreement between the parties expired on December 31, 1993. This dispute concerns a two year contract proposal and involves three issues: wages, hours of work and holidays. The City has proposed increases of 3% effective January 1, 1994 and an additional 3% effective January 1, 1995. The Union has

proposed increases of 2% effective January 1, 1994 and 2% effective July 1, 1994 and an additional 3% effective January 1, 1995.

With respect to the work days the City has proposed the elimination of the existing contract language that restricts the hours during which on duty employees can be required to perform productive work and which provides for extra pay to such employees who perform productive work after noon on Saturday and any time on Sunday or holidays. The Union proposes to amend the existing language by changing the methods of computing Saturday, Sunday and holiday payments. Present Article 4, Section G, which the City proposes to delete, reads as follows:

"The duty day for the purpose of training procedures and other regular, routine duties shall commence at 0700 and terminate at 1130, recommence at 1300 and terminate at 1630. Maintenance and servicing of vehicles, equipment, and other fire department property after 1630 shall be limited to items necessary for efficient response to alarms. The balance of the tour of duty shall be to provide service in matters of responding to emergency and non-emergency calls.

"The employer shall at its option adopt one of the two following alternatives:

1. The routine duty schedule for Saturday shall be from 0700 until 1200. Sunday and holidays, as designated in Article 10, shall be limited to the past customary practice of those duties necessary for efficient responses to alarms, housework, and vehicle checks.
2. In the event that the employer chooses to assign routine duties, then it shall pay employees four hours at time and one half on Saturdays, for any Saturday in which routine duties are assigned. If on Sundays or holidays the employer shall pay double for eight hours." (U.Ex. 102 at 6).

The Union would modify the existing language of Article 4, G-2 as follows:

Assignment of duties outside of normal duty day

Upon mutual agreement between the Chief and the Union, the Chief may assign routine duties outside the above stated duty schedule, or on Saturdays, Sundays, or holidays with no additional compensation to be paid by the City.

In the event that a mutual agreement cannot be reached between the Chief and the Union, the following apply:

Weekdays: Routine duties may be assigned between 1630 and 2200 hrs. All routine duties assigned outside of the schedule established by section G, above, shall be compensated at an additional 1/2 time of the employees base rate for hours worked. A lunch period of a continuous one and one half hour shall be scheduled between 1100 & 1400 hrs. A meal break of a continuous one and one half hours shall be scheduled between 1600 hrs. and 1900 hrs.

Saturday: Routine duties may be assigned from 0700 - 1200 hrs. In the event the employer chooses to assign routine duties between 1200 & 1630 hrs. employees shall be compensated at an additional half time of the employees base rate for hours worked. A lunch break of a continuous one and one half hours shall be scheduled between 1100 hrs. and 1400 hrs. Routine duties shall not be assigned beyond 1630 hrs.

Sundays & Holidays: Employees assigned routine duties on Sundays and holidays shall be compensated at an additional straight time rate for hours worked. A lunch break of continuous

one and one half hours shall be scheduled between 1100 hrs. and 1400 hrs. Routine duties shall not be assigned beyond 1630 hrs.

Wages: 1994: 2% 1-1-94, 2% 7-1-94
1995: 3% 1-1-95

The City's final offer would amend the holiday pay provisions as follows:

2. Article 10

- a. Effective in 1994, increase the number of personal holidays for support personnel from one to two (paragraph C.2.)
- b. Effective in 1994, increase the holiday payout for Operations personnel from 100 to 106 hours (paragraph D.)
- c. Effective in 1995, increase the holiday payout for Operations personnel to 110 hours.

The Union's final offer on holidays is as follows:

- a. Effective 1995 increase the holiday payout for operations for operations personnel to 110 hours (paragraph D.)
- b. Effective 1995 increase the number of personal holidays for support personnel from one to two (paragraph c.2.)

Paragraph 111.77(6) as Wisconsin Statutes sets out the criteria applicable for the dispute to be applied by the Arbitrator. The are:

- (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 age 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 the 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.

The parties have also agreed on certain tentative agreements to be included in the contract as awarded. The issues will be considered seriatim.

Wages

The Union's principal argument for a wage increase is based upon a comparison with the firefighters in the cities of Green Bay, Neenah, Menasha, and Oshkosh, which the Union asserts are the major cities in the Fox Valley. To support its conclusion it cites the opinion of Arbitrator Robert J. Mueller in 1988 and Arbitrator Marvin Hill in 1993. The City would add Fon Du Lac, Kaukauna and Sheboygan to the comparability list.

With respect to the comparables urged by the City, the Union states that Fon Du Lac, Manitowoc, Sheboygan and Kaukauna are either too small, or employ too few firefighters, or are geographically too far removed to be treated as a primarily comparable to Appleton. As for Kaukauna, which certainly lies within the Fox cities, 15 miles from Appleton, that city employees only 17 firefighters and only has 12,000 residents, which makes it substantially smaller than Appleton. Two charts introduced by the Union graphically describe the Union's case and are reproduced here. The first shows the top step for firefighters with 10 years experience at present rates and compares the rates and pay with comparable communities. The second compares the effect of the respective City and Union final offers.

**1993 TOP STEP FIREFIGHTER
10 YEARS EXPERIENCE
DIRECT COMPENSATION**

City	Base Salary	Longevity Pay	Shift Diff.	Uniform Allowance	Holiday Pay	Other	Total Direct Compensation
Appleton	33426	200	0	200	1631	499 ³	35956
Neenah	33384	144	0	225	1417	851	36020
Green Bay	35351	120	240	415	2976	354	39455
Menasha	33468	0	0	224	1370	753	35815
Oshkosh	34775	144	0	200	1715	0	36834
Mean ⁸	34244	102	60	266	1869	489	37031
Appleton Diff.	-819	98	-60	-66	-238	10	-1075

**1994 TOP STEP FIREFIGHTER
10 YEARS EXPERIENCE
DIRECT COMPENSATION**

City	Base Salary	Longevity Pay	Shift Diff.	Uniform Allowance	Holiday Pay	Other	Total Direct Compensation
Neenah	34788	144	0	225	1475	851	37482
Green Bay	36235	120	240	415	3050	362	40422
Menasha	35160	0	0	224	1439	753	37576
Oshkosh	36069	144	0	200	1779	0	38192
App-Union	34776	200	0	200	1631	519	37326
App-City	34428	200	0	200	1729	514	37071
Mean	35563	102	60	266	1936	492	38418
U Diff.	-787	98	-60	-66	-305	28	-1092
C Diff.	-1135	98	-60	-66	-207	23	-1347

The mean of total direct compensation for those cities is \$38,418.00, which includes base salary, longevity pay, shift differential, uniform allowance, holiday pay and certain other fringe benefits. The Union's proposal would bring that total to \$37,326.00 and the City's proposal would bring it to \$37,071.00. A comparison with the principal Fox cities shows that under either the City's or the Union's proposal, Appleton would still rank last.

The Union describes its proposal as an "erosion" proposal. The Union states it is not a "catch up" or even a "keep up" proposal. The Union also stresses that the Appleton Firefighters work more annual hours than the other Fox Valley Firefighters. Appleton works 2,728 hours while the mean for all of the cities is 2,599 hours. The Union's basic case is that the Appleton Firefighters work longer hours for less pay than the Firefighters employed by the comparable Fox Valley cities.

When indirect compensation is considered, which includes pensions, health insurance and dental benefits. Appleton ranks third under the Union's proposal and fourth under the City's proposal. The total indirect compensation of Appleton Union's proposal

would be \$15,552.00, and for the City's it would be \$15,454.00. The mean is \$15,948.00, which would still leave Appleton \$400-\$500 less than the mean. By using an hourly rate comparison, both proposals would place Appleton Firefighters last, primarily because of the greater number of hours worked by the Appleton Firefighters.

The City asserts that its offer is consistent with its internal settlements with all of its other bargaining units for 1994 and with the police settlement for 1995, which is for 3%. Accordingly the City argues that its position should be accepted in terms of consistency with internal settlements. The Union points out that Teamsters had received a 4% increase in July 1, 1992 and also a 3% increase in January 1, 1993 and 1% on July 1, 1993. The Union also adds that the City's non-union employees were offered 3.5% on January 1, 1994 and another 3.25%. The Union notes that the Water and Sewer Department got a 4% raise in 1994. The Union states that in 1993 the Appleton settlements ranged from 3 to 5 1/2% and only the police have settled in 1995 for 3%. Therefore, the Union asserts there is an absence of an internal settlement pattern. Furthermore the Union argues even, if there is an acceptance of the idea that there is an internal settlement pattern, it should not be controlling because of the large disparity of the wages between the Appleton Firefighters and the firefighters of other comparable communities.

The City cites the cost of living as supporting its offer of 3%. Since the national increase of the CPI for cities was 2.7%, while for the north central region it was 2.5%. The Union's response is that the cost of living criteria is but one criteria and the modest difference of 1% between the offers and the CPI, the CPI should not be determinative, especially in view of the comparability data which strongly supports the Firefighters.

The Union stresses that its proposal is designed to have a minimum fiscal impact because the split of 2% and 2% equals a cost of 3% for the year 1994. The cumulative affect costs \$6.00 per employee for the 1994. The total cost of the Union's increase they assert is \$20,172.00 or \$22.11 per employee. Furthermore the Union points out that the

City has not made a contention of inability to pay. The City does not contest that it has the inability to pay, only that it is inadvisable based upon the criteria, particularly its internal settlements.

Discussion

The Arbitrator finds the economic data presented by the Union to be compelling. While the differences in the offers are not great, the data weighs heavily in favor of the Union. The Arbitrator sees no reason to disturb the findings of either Arbitrators Mueller or Hill with respect to comparable cities. As a former long time resident of Wisconsin, this Arbitrator believes that the Fox Valley has always principally consisted of Oshkosh, Neenah, Menasha, Appleton and Green Bay. Of course there a number of smaller communities like Kaukauna, Kimberly, Little Chute and Combined Locks, but comparisons should be made with like communities, which has been done.

Under the Union's proposal, Appleton's wages would still rank the lowest among the five communities. Appleton Firefighters would still be required to work longer hours than any of the other communities.

Also I do not find the internal comparability argument by the City in this instance to be persuasive. The City has deviated from that pattern by awarding 4% to the Water and Sewer people and also by granting raises of 3 1/2% and 3 1/4% to its non-union employees for the years 1994 and 1995. I do not quarrel with the reasonableness of those raises, but I reject the argument about internal comparability. Also I have considered the fact that the data supports the fact that Appleton is a well managed city and that its fire services are provided at the lowest cost of any of its comparable communities. Since there is no question of the City's ability to pay, and since the difference in costs is relatively minor, the award on wages goes to the Union.

In sum the arbitrator finds for the Union on wages primarily because of external comparability. Appleton will still rank last among the five Fox Valley cities even with the Union's proposal. Furthermore, the welfare of the public is served by a reasonable wage

increase which still leaves Appleton in last place among the comparable cities. Also the difference of the CPI of about 1% is too little to be determinative.

WORK RULE ISSUE

The work rule issue illustrates one of the problems created by the total package final offer statute. The work rule in question was awarded to the Union by Arbitrator Hill even though he did not favor it, but because he had to give the total package, he gave the issue to the Union. A dispute subsequently arose as to the application of the work rule which ultimately was taken to arbitration and resulted in an unfortunate award, requiring the City to pay time and a half in addition to the hours already worked and double time for the hours already worked.

The language in the opinion of that grievance of Arbitrator is illuminating. "The undersigned rejects both parties arguments that the language of Article 4 Section G is clear on it's face. The two parties make defensible arguments for interpretations which are diametrically opposed to each other, and the undersigned is satisfied that the provision is ambiguous. That is, it could reasonably be read that the time and a half and double time pay was intended to be in addition to regular pay as argued by the Union or that it was intended to be as total compensation as argued by the City." The Arbitrator then went on to make a legally plausible argument based upon the briefs of the parties as to their intentions and concluded that the City should be required to pay time and a half in addition to the regular rates for assigned duties on Saturday and double time in addition to regular rates for assigned duties on Sunday. Such premiums are virtually unheard of.

The Union apparently recognized the problem it had in this arbitration with the Work Rule issue and therefore, has substantially modified it's proposal to provide half time for hours worked outside of the scheduled hours on weekdays, and till noon on Saturday. For hours worked on Sunday, the pay would be a total of double time. Such modifications makes the penalties much less onerous for the City. Had the proposal remained unchanged, this Arbitrator would have tipped entire package in favor of the City.

However, since the Union has substantially modified its proposal and made it less objectionable and less costly, the Arbitrator will award the Union's work rule proposal as part of the final offer.


The representatives of the parties at the hearing in a joint informal discussion with the arbitrator indicated that they had reached a tentative agreement on the work rule issue; but because of the wage issue, they were unwilling to resolve the matter. The details of the tentative understanding were not disclosed to this arbitrator. However, now that the wage matter has been resolved by this arbitrator, it is hoped that the parties will again agree on a work rule proposal, particularly if it affords the City even more flexibility than the Union's modified proposal.

HOLIDAY PAY

The proposals on holiday pay are virtually identical. The Union's proposal costs slightly less than the employers proposal because it is effective in 1995 rather than 1994. No further comment is needed on this issue and it is awarded to the Union.

Thus for the reasons stated in this opinion, the arbitrator Awards:

The Union's final proposal.



Arvid Anderson

Date: November 18, 1994