BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of an Impasse Between

CITY OF WAUSAU (FIRE DEPARTMENT)

and

LOCAL 415, IAFF

Decision No. 28529-A

Appearances:
William P. Nagle, City Attorney, for the Municipal Employer.
John Celebre, State Representative, for the Labor Organization.

ARBITRATION AWARD

The above-captioned parties selected, and the Wisconsin Employment Relations Commission appointed (Case 73, No. 51761, MIA-1924, Dec. No. 28259-A, 10/6/95) the undersigned Arbitrator to issue a final and binding Award, pursuant to Sec. 111.77(3) of the Municipal Employment Relations Act, resolving an impasse arising in collective bargaining between the parties on matters affecting wages, hours and conditions of employment of firefighting personnel by selecting the final offer of one of the parties.

A hearing was held in the Wausau, Wisconsin, on December 14, 1995. No transcript was made. Briefing ended on February 12, 1996.

The collective bargaining unit covered in this proceeding consists of all firefighting personnel in the employ of the Municipal Employer. There are approximately 53 employees in this bargaining unit.

The parties are seeking an agreement for 1995 and 1996.

THE FINAL OFFERS:

The final offer of the Municipal Employer consists of the following items in dispute:

Wage rate increases for all bargaining unit classifications of 3.5% effective January 1, 1995, and 3.0% effective January 1, 1996.

Increases in the certified EMT daily premiums to $7.50 for the Basic, $10.00 for the EMTD, and $15.00 for the EMT Intermediate; from $5.00, $7.50, and $10.00, respectively.

Increases in annual Hazmat (hazardous material) pay to $400 for the Technician certification, $600 for the Specialist certification, and $800 for the Team Coordinator; from $300, $500, and $700, respectively.

The addition to Appendix C of the parties' previous collective bargaining agreement of the specification that, "Six (6) off-duty members of the Hazardous Materials Regional Response Team shall carry a pager and agree to be within one (1) hour travel distance to the Central Fire Station at all times."

The addition to Article 18 - Sick Leave, Section B of the parties' previous collective bargaining agreement of the sentence, "Employees may not work for compensation for another employer while on family, medical, or sick leave."

The final offer of the Union consists of the following items in dispute:

Wage increases of 3% on January 1, 1995, 2% on July 1, 1995, 3% on July 1, 1996, and 2% on July 1, 1996.

The revision of Article 18 - Sick Leave, Section 6 of the parties' previous collective bargaining agreement to read as follows:

> G. Unused Sick Leave: When an employee retires at the normal retirement age as defined by the Wisconsin Retirement System, or is forced to retire due to medical disability and qualifies for a full disability under the Wisconsin Retirement System, a maximum of fifty percent (50%) of the sick leave remaining in the employee's accumulated sick leave account may be converted to its monetary value (employee's hourly rate, exclusive of longevity and shift differential) and paid to the employee as cash Retirees shall have the option to remain in the group Health insurance as long as the premiums are paid.

The revision of Article 13 - Workweek, Section 6 of the parties' previous collective bargaining agreement by adding "or any City agency" to the following terms entitling employees to overtime pay: "When an employee attends a fire or ambulance related school approved by the Chief . . .".

Finally, regarding the revisions to the Sick Leave provisions proposed by the Municipal Employer, the Union would add to the Employer's proposed wording, "on days they would be on duty."

THE UNION'S REQUEST TO REVISE ITS FINAL OFFER:

Following the hearing in this matter, but previous to the expiration of the briefing period, the Union requested permission from the Arbitrator to revise its final offer on the basis of a "drafting error." Specifically, this request referred to the Union's offer respecting unused sick leave wherein it proposed the terms quoted above to substitute for the following provisions of the parties' previous agreement.

> G. Unused Sick Leave: When an employee retires at the normal retirement age as defined by the Wisconsin Retirement System, or is forced to retire due to medical disability and qualifies for a full disability under the Wisconsin Retirement System, a maximum of fifty percent (50%) of the sick leave remaining in the employee's accumulated sick leave account may be converted to its monetary value (employee's hourly rate, exclusive of longevity and shift differential) and either paid to the employee in cash as a severance benefit or used to pay premiums towards the hospital and surgical insurance plan then in effect for the employee until such time as one of the following occurs:
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> 1. The fund is deleted;
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> 2. The employee dies; or
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> 3. The employee becomes employed and/or eligible for other hospital and surgical insurance from another source.

Particularly, the Union requested permission to restore, "until such time as one of the following occur:", and "The employee becomes employed and/or eligible for other hospital and surgical insurance from another source," which its final offer deleted from the prior contract's terms.

The City, in turn, objected to this request to amend the Union's final offer. The Arbitrator, by a letter dated January 8, 1996, closed the evidentiary record but withheld ruling upon the request to amend the final offer indicating that the previously specified briefing schedule was still in effect. Both parties addressed this matter in their briefs.

Section 111.77(4)(b), which governs this proceeding, states in material part as follows:

> "Neither party may amend its final offer . . ., except with the written agreement of the other party. The arbitrator shall select

the final offer of one of the parties and shall issue an award incorporating that offer without modification."

Perhaps in a case that clearly and unambiguously involves a typographical or clerical error a "common sense" exception to these terms might be found. In any event, the Arbitrator is convinced that this is a case of another sort of error the correction of which would violate both the spirit and the plain meaning of the statutory terms. During the course of the hearing when the ramifications of the Union's offer, as written, were being discussed, the Union's representative explained the deletion occurred "because we screwed up" and did not genuinely intend to do so. But the Union also attempted to show that the highly undesirable effects allowed by the deletion upon the cost of insurance premiums would not necessarily follow.

The Arbitrator concludes that the deletion in question, while it very well may have been unintended, in some sense, was not such an error as the Arbitrator may "correct" under the above-quoted statutory language, and that the Union's final offer may not be revised as requested. Furthermore, it is found that the effect of this deletion is to allow a retiree who is eligible for Medicare coverage at age 65 to elect to continue to purchase the group insurance in lieu of other insurance or Medicare coverage and, by virtue of his or her membership in the group, cause the premium costs of all other members to literally multiply. Especially considering that the others so affected include other retirees for whom such protection is a necessity and who are paying the premiums themselves, this seems an extremely serious risk. Indeed, in the judgment of the Arbitrator, this factor casts the matter of selecting a final offer in terms of whether the Employer's offer includes any item or items which are even less acceptable under the statutory criteria to be applied in such matters.

FURTHER DISCUSSION:

In the judgment of the undersigned, while none of these disputed matters are trivial or insubstantial, only one is of a magnitude that justifies consideration of risking health insurance rates as described above. That is the matter of wage rate increases.

As the Union emphasizes, by the comparisons that the Union favors, and which the Arbitrator finds both conventional and reasonable, the members of this bargaining unit are very low paid. Indeed, were the Union's offer adopted, this unit's ranking among its peers would continue to be near the bottom. The Employer's contentions respecting internal comparables, cost-of-living factors, and the relevance of certain other Wisconsin cities are unpersuasive.

However, in the final analysis, the Arbitrator cannot justify the health insurance risk to gain the wage level improvement proposed by the Union. This correction may be achieved in future negotiations or arbitration. In the meantime, health insurance coverage should be accessible as mutually intended by the parties.

Finally, the Arbitrator would make particular note of the pager provision in the Employer's offer, which the Union strenuously opposes on various grounds, and which the Employer discusses only quite scantily in its brief. The concept of limiting off-duty employees to one-hour's travel time from the Central Fire Station constitutes a substantial restriction upon the employees' personal freedoms.

The Arbitrator, in selecting the Employer's offer, places critical importance on the use of the word "agree" by the Employer in drafting these terms. This provision could have been drafted without "agree" to make it clear that it represents a matter of unilateral Employer authority and discretion. The word "agree," if given ordinary meaning, indicates that employees must accept this restriction voluntarily. A contrary reading, in conjunction with other considerations, would have precluded the selection of the Employer's offer.

AWARD

On the basis of the foregoing, the record as a whole, and the "factors" specified by the Municipal Employment Relations Act for such selections, the undersigned Arbitrator selects and adopts the total final offer of the Municipal Employer.

Signed at Madison, Wisconsin, this 10th day of April, 1996.

Howard S. Bellman
Arbitrator