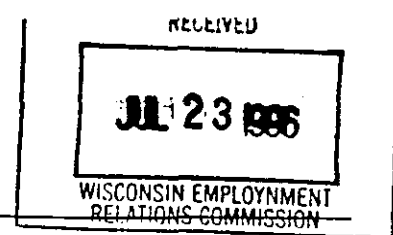


STATE OF WISCONSIN
BEFORE THE ARBITRATOR



In the Matter of the
Interest Arbitration Between:

ARBITRATOR'S DECISION
AND AWARD

International Association
of Firefighters, Local 311,

Case 185, No. 53139

and

MIA-1999

The City of Madison.

Decision No. 28595-A
Milo G. Flaten, Arbitrator

SCOPE AND BACKGROUND

International Association of Firefighters, Local 311, of Madison, Wisconsin (hereafter, the "Union") filed a petition with the Wisconsin Employment Relations Commission requesting the latter to initiate compulsory final and binding arbitration pursuant to §111.77(3), Wisconsin Statutes, known as the Municipal Employment Relations Act. The Union alleged that an impasse in collective bargaining existed between it and the City of Madison (hereafter, the "Employer") over compensation under the contract the Employer had with the State dealing with emergencies involving hazardous waste.

Thereafter, a member of the Commission conducted an investigation and, based on the findings of that investigation, concluded that an impasse did indeed exist.

The Employment Relations Commission then appointed Milo G. Flaten of Madison, Wisconsin as neutral arbitrator to hear the matter and to issue a final and binding award in order to resolve the impasse.

Under Wisconsin law, the arbitrator is to select either the total, final offer of the Union or the total, final offer of the Employer, nothing else.

The 1995-96 Collective Bargaining Contract between the parties dealing with other duties and compensation of firefighters had been duly executed some months previously. However, in anticipation of the finalization of an agreement between the State of Wisconsin Emergency Response Board and the Employer for the services of a Regional Hazardous Material Response Team, that collective bargaining contract contained the following clause:

"In the event the City enters into a contract with the State of Wisconsin to provide a regional hazardous materials response team, the parties agree to reopen the contract for negotiation of compensation for team members."

This Decision and Award pertains to that compensation for team members.

The State Emergency Response Board had designated certain regions for these services throughout the state and put out requests to a number of cities in the designated regions to provide these services. Ultimately, the State of Wisconsin and the Employer entered into a contract for providing services to the region in which the Employer was located covering the south-central and southwest portions of the state. The contract provided that the State's money was to be expended only for services provided under the contract and did not dictate how its funds were to be allocated in order to fulfill the terms of the contract; that was

up to the responders. There are seven such Regional Response Teams throughout the state's 72 counties.

Following the execution of the contract between the Employer and the State for Response Team services, the Union notified the Employer that it wished to exercise the "reopener" clause in the collective bargaining contract to begin bargaining for compensation for team members. In that negotiation for compensation, the parties also agreed on the issue of providing food and shelter for team members when on hazardous waste duties, the retroactivity of compensation for them, and the number of team members to be compensated. The only issue remaining is the monetary compensation for the Hazardous Materials Response Team members, hereafter referred to as the "HIT Team Members."

THE FINAL OFFERS

The Union's final offer requests that it receive a 3-percent premium to be paid to HIT Team Members on a daily basis (24-hour shift) when assigned to respond as a Wisconsin Regional Response Team Member. The 3-percent premium would be calculated using the HIT Team Member's base pay.

The Employer's final offer proposes to pay 25 cents per hour for Union members assigned to respond as a Wisconsin Regional Response Team Member for an entire shift (24 hours) with 35 cents per hour for captains and/or lieutenants assigned to respond as a Response Team Member.

Under the contract, the area to be protected by the Employer's HIT Team encompasses the counties of Crawford, Richland, Sauk,

Columbia, Dodge, Grant, Iowa, Lafayette, Green, Rock and Dane, the county in which the Employer is located. For affording this protection, the Employer is to receive from the State \$1.225 million over a 5-year period.

In the previous such contract between the parties for the period January 1, 1995 to December 31, 1995, HIT Team Members received 10 cents per hour premium pay when assigned as members of the primary team.

The Wisconsin Municipal Employment Relations Act requires that in reaching a decision, the arbitrator shall give weight to certain factors. The Employer asserts that the most important of those factors is the comparison of wages with those of other public employees performing the same services in comparable communities throughout the state. That, urges the Employer, is the more critical standard by which to judge the reasonableness of the two offers presented by the parties.

On the other hand, the Union asserts that the most important of these statutory factors is the interest and welfare of the public and the financial ability of the Employer to meet those costs.

While it agrees that the comparison of wages with those of other public employees is reasonable, the Union asserts that the comparison should be with compensation received by other Union members of the Employer who are trained as Emergency Medical Technicians and are assigned to ambulance duty. Using that comparison, the Union points out that its final offer of 3 percent

for HIT Team Members is certainly reasonable when compared to the 5 percent compensation received by the Employer's Emergency Medical Technicians when assigned to an ambulance.

To this the Employer contends that the more of the contractual money which is spent on wages decreases the Employer's ability to fund other areas, such as training and first aid equipment, items which were declared to be the most important by the Union's own witnesses.

With regard to the Employer's justification through comparison with other Wisconsin cities that have HIT Teams, the Union points out that the Madison HIT Team is much better trained and has skills far above and beyond those other departments used by the Employer for comparison. In fact, declares the Union, the Employer's Executive Assistant Fire Chief even admitted that the training for those compared departments "would not be recognized by the Madison Fire Department," meaning that those individuals would need much more training to ascend to the level of training already obtained by this department.

DISCUSSION

The crux of this dispute appears to be which of the factors required by the statute is to be given the greater weight, the external comparables cited by the Employer or the internal comparables offered by the Union.

In this regard, it is noted that all of the communities having the exact same contract with the State Emergency Response Board are

paying their HIT Teams on the basis of a dollar amount, whereas the Union requests its compensation to be paid by a percentage figure.

With regard to the other factor deemed by the Union to be important, it is clear that the interests and welfare of the public and of the firefighters involved has never been in dispute and cannot be considered a genuine issue. After all, the Employer certainly is cognizant of the dangers of dealing with discharges of hazardous materials and is sensitive to the need for proper training of its personnel.

It is interesting to note, however, that the Union, in support of its position, has offered many examples of incidents involving discharges of hazardous materials from other localities throughout the state. Many of the examples shown are from communities which the Employer has cited as comparables to be used in its compensation offer. Nevertheless, the seeming lack of examples in the Madison area could be due to the superior training and public education shown at the hearing to be a part of the duties performed by the Union.

The Employer has stated that where evidence is lacking from either side, the arbitrator may "use his own knowledge of Wisconsin cities and those from other states to extrapolate reasonable comparability" In this regard, it certainly is evident that the City of Madison is larger than all of the communities cited by the Employer, save Milwaukee. It would also seem that the manufacture and transport of hazardous materials would be greater in the instant region than in remote sites of the state.

Additionally, the Department of Natural Resources' Spill/Release Rate map shows that the South District had far greater spills and discharges of hazardous materials than any other district, save for the Southeast District, Milwaukee.

While the duties and responsibilities of the Employer's Emergency Medical Technicians and the HIT Team Members are different, the length and intensity of training seems to be at least comparable. Furthermore, the example cited by the Union of the methylene chloride incident in the nearby community of Stoughton, Wisconsin was compelling in the demonstration of the manner a toxic, combustible liquid spill was handled by the Employer's HIT Team. There, the accident happened in the dead of winter, which made the donning of the encapsulating suits and other protective clothing extremely difficult. The manner in which the Employer's HIT unit responded and handled the methylene chloride incident was impressive to this observer. It was a good example of the serious responsibility faced by HIT Team members being similar to that of the Emergency Medical Technicians employed by the City.

Furthermore, this observer is cognizant of the fact that the district in question is a "bridge" district for traffic traveling highways between Chicago and the Twin Cities. Hazardous materials are transported through the district constantly, and the congestion caused by mixing with heavy tourist traffic makes the district even more unique.

Thus, it is clear that the internal comparables cited by the Union should be given more weight than the external, state-wide examples cited by the Employer.

Since the Employer already pays percentage-based premiums for Emergency Medical Technicians' longevity pay, Apparatus Engineers' pay, Paramedic pay and for educational incentive, it makes sense that it should continue to do so with regard to the HIT Response Team. In other words, the Union's final offer of a percentage amount is more reasonable than the Employer's final offer of a flat dollar amount.

AWARD

After full consideration of the criteria listed in the statute and after careful and extensive examination of the exhibits and briefs of the parties, the arbitrator finds that the Union's final offer more closely adheres to the statutory criteria than that of the Employer and directs that the Union's proposal be incorporated into the Collective Bargaining Contract containing the other items to which the parties have already agreed.

Date: July 18, 1996.

BY THE ARBITRATOR:



Milo G. Flaten, Arbitrator