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SPRINGFIELD, ILLINOIS

ARBITRATORS' AWARD

In the Matter of the Arbitration Between Local 99, International Association of Firefighters and The City of Aurora, Illinois	FMCS Case No. 91-00965 David A. Dilts Neutral Arbitrator David Foreman Union Arbitrator Scott McCleary Employer Arbitrator June 19, 1991

APPEARANCES:

For the Union:

J. Dale Berry, Attorney-at-law
Michael Lass
Gary F. Strong
Thomas M. Brady
Larry L Dickson

For the City:

Michael Weinstein, Attorney-at-law
Wesley R. Weisenberg
Roger Cantlin
Jerry Stevens

A mediation session was held on Wednesday, January 23, 1991 during which all issues except salaries were resolved. Arbitration hearings in the above cited matter were conducted Wednesday, March 6, 1991 at City Hall, 44 East Downer Place, Aurora, Illinois. The parties stipulated that the present matter is properly before the arbitration panel. The record was closed upon receipt of the parties' post hearing briefs on May 28, 1991.

ISSUES AT IMPASSE

The sole issue at impasse is the percentage firefighter salary increase for the final year of the parties agreement.

BACKGROUND

The parties were in dispute concerning the increase in salaries for firefighters and lieutenants. After the arbitration hearing the parties were permitted 14 days in which to modify their final offers. The City modified its offer to give lieutenants a total salary increase of approximately 9.5 percent thereby settling this issue and removing it from the jurisdiction of the panel. The sole remaining issue is the salary increase to be awarded firefighter privates.

The panel is limited to select either the City's or the Union's final offer. The panel is required to apply the criteria included in Section 14 (h) of the Illinois Public Labor Relations Act (Ill. Rev. Stat., 1989, ch. 48, para. 1614 (h)). The statute states, in pertinent part:

> (h) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following, as applicable:
>
> (1) The lawful authority of the employer.
>
> (2) Stipulations of the parties.
>
> (3) The interests and welfare of the public and the

financial ability of the unit of government to meet those costs.

(4) 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 performing similar services and with other employees generally:

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

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

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

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

(8) Such other factors, not confined to the foregoing, which are 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 or in private employment.

UNION'S POSITION

The Union requests the panel to award a 6.5 percent across-the-board increase in salaries to firefighters effective January 1, 1991. It is the Union's position that the facts in evidence clearly demonstrate that its final offer is the most reasonable, when judged by the statutory standards and should be awarded.

It is the Union's position that the City has the ability to pay and that the salary increase requested is consistent with providing the public with appropriate fire protection. The Union

also contends that its comparability groups are the most appropriate and should be used to provide the panel with guidance. The firefighters' purchasing power has been eroded by inflation during 1990 and the City's offer will result in a net loss of purchasing power of one percent.

The evidence also shows that if the City's proposal is adopted by the panel that the current internal inequities within the Fire Department and in comparisons with the Police Department will be exacerbated. The Union's proposal will maintain the current inequities and do almost nothing to reduce them. The evidence also shows that external comparisons will worsen if the City's position is adopted and the relative position of the Aurora Fire Department will be maintained if the Union's proposal is adopted.

CITY'S POSITION

The City offers an across-the-board salary increase of 4.5 percent effective January 1, 1991. Using the statutory standards the City believes the panel will conclude that its offer is the most reasonable.

The City's comparability data shows that its offer is consistent with settlements in similar cities. The City's offer will maintain its relative position for salaries in similarly situated cities. The internal comparisons the Union wishes to draw for the Fire Department are for positions with greater responsibilities and are not germane after the settlement was reached for lieutenants. The remaining settlements within the City are all in the range of 4.5 percent and strongly supports

the City's position.

The City also wishes the panel to note that finances are uncertain. The City's final offer will result in a fair and reasonable wage. For the City to pay more than is prudent for fire protection means that less resources will be available for other necessary services. This is simply not consistent with the public's interests and welfare.

The cost of living issue also supports the City's position. There is no dispute that the CPI shows an increase that is the midpoint between the City's and the Union's proposals. However, there are step increases built into to the parties' agreement that will result in firefighters receiving a percentage increase in excess of the rate of inflation. This will result in a wage increase of between 5.7 and 7.1 percent depending on the step. This result shows that firefighters will gain purchasing power under the City's final offer. The Union's final offer is considerably more than what is necessary to maintain purchasing power.

ARBITRATORS' OPINION

The parties' final offers are separated by two percentage points. The City's final offer was for a percentage increase of 4.5 percent and the Union's final proposal was for a 6.5 percent increase. The panel must base its findings of fact, opinion, and order on statutory criteria (Ill. Rev. Stat., 1989, Section 48, para. 1614 (h)) . These criteria are (1) lawful authority of the employer, (2) parties' stipulations, (3) interests and welfare of

public and financial ability of the employer, (4) comparability with similarly situated public and private employment in comparable communities, (5) cost of living, (6) overall compensation, (7) changes in the foregoing during pendency of the arbitration proceedings, and (8) other such factors normally considered by arbitrators. Each of these standards will be considered in the following sections of this opinion.

1. Lawful Authority of the Employer

There is nothing in the record of evidence that suggests that this employer does not have the lawful authority to comply with an arbitration award ordering either position as the final settlement of the present issue.

Both the City and the Union argue that the panel should fashion an award that will promote collective bargaining and not cause the other party to rely on third party intervention. There simply are no assurances this panel can build into its award that will provide the parties with such assurances. The art of persuasion, the discovery of evidence, and good-faith negotiations based on facts with eye towards settlement are the keys to negotiated settlements. These factors are within the discretion of the parties and not the arbitration panel.

2. Parties Stipulations

The parties are not in agreement concerning the appropriate external comparability groups, the relevance of the cost of living data, and important elements of the bargaining history.

The parties agree that there is a significant pay differential between firefighters and captains.

The parties are also in agreement that the percentage wage increase herein ordered shall be retroactive to January 1, 1991.

3. Interests and Welfare of Public and Financial Ability of City

The City has not argued an inability to pay the Union's proposed wage increase. The City has, however, argued that the Union's proposal is not in the best interests nor does it further the welfare of the public.

The City's argument is basically one of the allocation of scarce resources among competing interests. The City, correctly argues, that it has several other public services to provide, many of which are as important as the fire service. The City also accurately argued that there is uncertainty in its financial position. What the City argued has merit, but is not sufficiently constraining to form the basis of the award in this matter. Each jurisdiction in Illinois faces the same type of uncertainty associated with state legislative action. The City has not demonstrated to this panel any fiscal limitation that would prevent the panel from awarding the Union's final position. However, there is more to the City's argument than simply a legalistic or mechanistic determination of an ability to pay. The City contends that it must be accountable to the taxpayers and that relatively high taxes and the need to provide services other than fire protection imposes certain constraints on the City's freedom to allocate resources. This is simply the responsible government argument and again it is not without

merit.

The City, on the other hand, has a longer run responsibility to its residents and that is to provide continuity to its ability to provide an effective fire service and a reasonable wage is a necessary element of this responsibility. In fact, this standard cannot be reasonably separated from the cost of living and comparability standard. It is therefore the considered opinion of the panel that this standard's weight must rise or fall on the determinations made in cost of living and comparability.

4. Comparability

The parties have been unable to agree on an external comparability group of similarly situated communities. Comparisons with jurisdictions that have been able to successfully negotiate a wage are frequently given heavy, if not controlling, weight in the arbitration of wage issues. As specifically recognized in the Illinois statute, these comparisons are not limited to public employers; even though public employers may be the most similar in the work required. There is also the matter of internal equity, hence internal comparisons are also commonly utilized by interest arbitrators in making wage determinations. These comparisons will be examined in the following sections.

Internal Comparisons

Internal comparisons with fire captains and the police department provide some insight into the relative merit of the

competing final offers. City exhibit 22 shows that in 1989 fire management personnel (captains and above) received an 11.66 percent increase. The City characterized this salary increase as an aberration. This increase for captains was granted while those employees of lower rank received a 4.5 percent increase on the various steps of the salary schedule. In 1989 the police department received a 6.0 percent increase (consisting of a 4.5 percent increase in July, 1989, .5 percent increase in January of 1990 and $600 signing bonus, $335 of which will be added to the base in July of 1990) and in 1991 police received a 6.35 percent increase, for an 18 month contract. The remaining City bargaining units have settled for average increases between 4.0 and 5.0 percent during the 1989-91 period (again see City exhibit 22).

In weighing this evidence, aberration or not, it is clear that the increase granted fire management in 1989 strongly favors the Union position to maintain equity within the fire department. Examining Union exhibit 7A shows that the differential between the lieutenants' salary and those of the captains was increased from 6.54 percent in 1988 to 27.47 percent in 1990. There is nothing in this record to convince the panel that there have been changes in the requirements of the respective positions or work environment that supports such an increase in the differential. The City has recognized this differential is excessive and granted 5.0 percent more to lieutenants than 4.5 percent increase offered its firefighters.

In examining the comparisons with police it is clear that the police department bargaining unit received better increases

in 1989 and 1991. The Union argues that it was the mutual intent of the parties to establish parity between the police and fire units. The City, however, does not view the bargaining history as being limited to the establishment of parity between the public safety bargaining units.

The internal comparison of fire management personnel with bargaining unit personnel reflects the internal equity of the total compensation system offered. Fire captains and assistant chiefs work for the same employer, accomplishing the same mission as the bargaining unit. This internal comparison is therefore among the most valid that can be made. The significant increase in the differential between fire captains and lieutenants was reduced by granting fire lieutenants an additional 5 percent increase above the 4.5 percent the City offered. This is evidence that there is a significant inequity, whether an aberration or not, that was deemed worthy of correction for fire lieutenants and must be heavily weighed in favor of the Union in determining the most reasonable salary increase in the current impasse.

Police and firefighters are both public employees within Aurora. Both groups of employees have relatively hazardous jobs when compared with other City employees. Further, both bargaining units have work schedules that are not normal "nine to five" jobs. The comparability of the work therefore makes the police and fire departments the most reasonable of the City's other bargaining units as comparability groups. Comparisons with the remaining City employees are acceptable under the statutory

criteria, however, there is less similarity in the work required, schedules, and risks. Therefore the remaining City bargaining units cannot be given as much weight as the comparisons within the fire department and with the police department.

In the Chairman's considered opinion, the evidence with respect to police compensation shows that fire fighters are not as well paid. The comparison of Union exhibit 18 with Appendix A of the parties' collective bargaining agreement shows that firefighters with under one year of seniority are paid $266 less than patrolmen with the same seniority. At the other end of the scale, firefighters with over 5 years service are paid $33,184 compared with $35,019 for the similarly situated police officer, a difference of $1835. Other compensation differences do not appear to remedy the difference in police and fire salaries (see City exhibits 20 and 21, Joint exhibit 1 (relevant articles), and Union exhibits 5 and 17).

External Comparisons

The parties have entered two different comparability groups into the record. The City has offered a group of ten "comparable" jurisdictions including; Arlington Heights, Schaumberg, Waukegan, Evanston, Naperville, Elgin, Joliet, Decatur, Springfield, and Peoria. The City analyzed these ten cities using assessed valuation (City exhibit 7), average home price (City exhibit 8), median family income (City exhibit 9), and sales tax receipts (City exhibit 10). The City then concludes that of these ten jurisdictions there are four that are the most comparable (Waukegan, Naperville, Elgin, and Joliet) and

that these should be used by the panel. The Union has offered a group of six "comparable" jurisdictions including; Arlington Heights, Elgin, Evanston, Joliet, Naperville, and Waukegan. The differences in the lists of comparables consists of the Union adding Evanston and Arlington Heights to their list.

When the parties cannot agree on a group of comparable jurisdictions from which to draw inference concerning the elements necessary to determine salaries it is little wonder that impasse results. In examining the comparisons made with the City's suggested similar cities the evidence supports the City's offer as the most reasonable. When examining the evidence offered by the Union for its proposed similar cities the Union's offer seems most reasonable.

The problem for the arbitration panel is to determine what constitutes a reasonable comparability group. City exhibit 7 purports to present assessed valuation per capita. This exhibit contains 1989 data for Aurora and Elgin. This exhibit therefore cannot be fully relied upon to form a credible basis for determining what the appropriate comparability group is. Average home price is offered in City exhibit 8, the data purport to be 1990 information. This exhibit shows that average home prices in Evanston are almost double of those in Aurora and that Springfield's average home price is 18.5 percent below that of Aurora. In a range of plus or minus 10 percent is selected then only Joliet and Waukegan are comparable. If plus or minus twenty percent is selected then Springfield, Waukegan, Elgin, and Joliet are comparable. However, Springfield is not in the Chicago

metropolitan area.

In examining the median family income (City exhibit 9) it is clear that the average median income for the 11 cities on this exhibit is $36,427.27. Both Naperville and Arlington Heights are significantly above the this average and cannot be said to be comparable on this basis.

Sales tax receipts in City exhibit 10 show only Schaumberg, Peoria, and Springfield are above Aurora. Waukegan, Elgin, and Evanston are at the bottom of the list, at least 30 percent below Aurora.

From this information alone it is impossible to demonstrate validity of any comparisons. The first test is whether the proposed comparables are in the Chicago metropolitan area, hence the same labor market from which Aurora firefighters can be reasonably expected to be drawn. It is not reasonable to include Decatur, Peoria, or Joliet and expect the comparisons to be characteristic of the relevant labor market. The remaining jurisdictions can be reasonably characterized as being within the Chicago metropolitan area labor market.

In examining population it is clear that Springfield, Peoria, and Decatur are much larger cities than Aurora. Schaumberg is 31,000 persons smaller than Aurora.

It is the Chairman's considered opinion that Schaumberg, Springfield, Peoria, and Decatur cannot be included in a most comparable group of similarly situated jurisdictions. This leaves six of the original ten jurisdictions analyzed in City exhibits 7 through 10. These six jurisdictions are Arlington Heights, Elgin, Naperville, Evanston, Joliet, and Waukegan. This

results in a very small sample of similarly situated cities. Using City exhibit 19 there is one city which settled for 5.0 percent increases, three that settled for 4.5 percent and two that negotiated a 4.0 percent increase. This comparability group adds Arlington Heights and Evanston to the City's group. From the Union's comparability group nothing is lost. In comparing Union exhibit 5 with City exhibit 15 the is little consistent data found.

Using the Union's data found in exhibit 5 the 1990 salaries for the reconstructed comparability group are:

Evanston	$35,196
Elgin	$35,076
Arlington Heights	$34,930
Naperville	$34,583
Joliet	$32,139
Waukegan	$31,535

In this group Aurora ranks fifth out of seven cities. If the data is accurate concerning salary increases contained in City exhibit 19 then the data changes for 1991 to:

Evanston	$36,780
Arlington Heights	$36,677
Elgin	$36,479
Naperville	$35,966
Joliet	$33,585
Waukegan	$32,954

The City's proposal would result in a comparable salary of $34,677 leaving the firefighters fifth of seven cities. The Union's proposal would also leave the firefighters in Aurora fifth of seven cities. Using either the City's comparability group or the Union's comparability group also provide precious little insight as to the relative reasonableness of the parties' final offers.

Aurora's ranking among its comparable jurisdictions will not substantively change if either parties' final offer is awarded. The City's 4.5 percent is the most common among the settlements within the comparability group. Only Arlington Heights, Elgin and Naperville deviate from the 4.5 percent settlement. The evidence concerning external comparability favors neither party with respect to changes in relative compensation among the comparables. The percentage increases are, however, more consistent with the City's position.

Comparability: Both Internal and External

The arbitration panel is left with a dilemma. Is internal or external comparability more important in this impasse? The evidence concerning internal comparability is precise and suffers very little from complicating factors. The internal comparisons are also the ones that city employees can most readily make and therefore effect morale. The external comparisons are relatively less precise and have fringe benefit, other wages (i.e., paramedic), hours, and working conditions complications. The external comparability group constructed by the Chairman also suffers from a lack of numbers of similarly situated

jurisdictions. The City's comparability group suffers even more from number of observations. The small number of observed comparable jurisdictions makes inference less reliable. Viewed as a whole, the comparability issue must be resolved on the basis of the internal comparisons and the internal comparisons given relatively more weight.

5. Cost of Living

As the parties have observed the increase in the CPI was 5.5 percent over the past year. This is the mid-point between the parties' final offers. The City, however, contends that the CPI is not a reliable measure of the cost of living. The City correctly observes that there is a major component of health care in the survey market basket of goods used by C.P.S. in creating the CPI. In fact, the CPI has been the subject of several criticisms, many contending that the CPI understates inflation. Without specific evidence concerning any alleged bias in the CPI as it applies to this bargaining unit the arbitrators have no alternative but to accept the CPI as the most accurate time series measure available concerning the erosion of wages by inflation.

The City also argues that the step increases must be considered in calculating the percentage increase in wages to firefighters. The panel rejects this view. The longevity increases are payment for experience gained through years of service. The step increases cannot therefore be considered as a part of base, but payment for having become a more experienced

firefighter. In other words, these increases are negotiated for the purpose of providing payment for experience. Further complicating the City's argument on this point is the fact City exhibit 24 shows that 54 of 96 firefighters have reached the top step, thereby eliminating any further increase in salary to be gained by having served more years. In fact, for these 54 firefighters the City's proposed 4.5 percent increase will result in an erosion of their bargaining power with an inflation rate of 5.5 percent.

There is very little support for either position to be obtained from the cost of living criteria in this case. If either party's position is supported there is marginal support for the Union's position to the extent that the majority of the bargaining unit has already attained the top step in the salary schedule and the 4.5 percent increase offered by the City is less that 5.5 percent increase in the CPI.

6. Overall Compensation

The comparability section of this opinion addresses much of the evidence under this criteria. There is little comparability evidence in this record concerning the total economic packages offered firefighters in comparable jurisdictions. City exhibits 20 and 21 address the issue of additional compensation. Aurora paramedics receive an average of $1,692.00 and a recertification bonus of $100.00 per year (City exhibit 20). Aurora firefighters also receive $600.00 per year in clothing allowances. The City argues that the clothing allowance may be the highest in the area. This contention is supported by the testimony of Mr.

Wesley Weisenburn, director of personnel/labor relations for the City of Aurora (Transcript, pp. 205-07).

The remaining components of the economic package are not argued as a cause for the acceptance or rejection of either party's final offer. Aurora participates in the State firefighters' pension plan and provides medical insurance that is quite competitive with similar jurisdictions.

The City, however, argues that Aurora has fewer weekly work hours than the average for the Union's own comparability group (Union exhibit 3). Union exhibit 3 shows that two cities require more weekly hours than Aurora, three cities require fewer, and one (Naperville) requires the same 52 hours per week.

City exhibits 2 and 5 show the numbers of firefighters in cities over 75,000 and surrounding jurisdictions respectively. On City exhibit 2 Aurora ranked first and on City exhibit 5 Aurora ranked second of 7 cities. This information, however, does not tell the whole story. The ratio of firefighters to total population in the jurisdiction shows Aurora has nine-tenths of a firefighter per thousand population, the same as Naperville and Arlington Heights. No other city on exhibit 5 has a lower firefighter to population ratio save Joliet (with seven-tenths of a firefighter per thousand persons). Three of the jurisdictions had higher firefighter to population ratios.

The hours of work and number of firefighters do not support the City's position, nor does this evidence provide compelling support for the Union's position. The remaining of elements of total compensation do not provide a compelling basis for an

award.

7. Circumstances during Pendency of Arbitration

The parties brought forward no evidence during the pendency of the arbitration that is controlling in this matter. The revision of the City's final offer to cut the differential between lieutenants and captains shows recognition of the Union's contention that an inequity existed. This is not sufficient for a finding in favor of either party by itself.

8. Other Factors Traditionally Considered

The major standards of wage determination in interest arbitration are the ability to pay, comparability, and the cost of living. The minor standards that have frequently been applied exclusive of statutory requirements are not issues in the instant impasse, separate from their role within the criteria examined above.

CONCLUSIONS

The ability to pay, in a legal sense, is not at issue, nor is there convincing evidence that the public welfare or interest is significantly effected by the adoption of either parties' final offer. The cost of living criteria is not a compelling cause to accept or reject either parties' final offer. At the margin, for the 54 firefighters at the top step, there is some minor support to be found for the Union's proposal. The internal salary structure problems created by the salary increases granted to fire management in 1989 provides a compelling reason to award

the Union's final offer and reject the City's proposal, all other things equal. The external comparisons provide no compelling basis to award either final offer, but marginally support the City's position. There is nothing else in this record of evidence that provides a sound basis for an award.

In summary, the arbitration panel is obliged to select the most reasonable final offer. The credible evidence suggests that the Union's final offer is marginally more reasonable than that of the City. The Union's final offer is more reasonable simply because of the internal comparisons and no compelling reason under any other criteria to find otherwise. This award should resolve the major portion of the Union's claim of inequity that exists between fire management and the bargaining unit. It should also make substantial progress in maintaining a range of appropriate comparability with the police bargaining unit. The relevant external comparisons are neither improved nor worsened by this award.

AWARD

The Union's final offer of a 6.5 percent increase on the base salary is awarded. The parties' agreement on drug testing policy and lieutenant's pay increases are ordered by the panel as the resolution of those impasses.

At Fort Wayne, Indiana
June 19, 1991:

David A. Dilts
Neutral Arbitrator

AGREE:

David Foreman
Union's Arbitrator

DISAGEE:

Scott McCleary
City's Arbitrator