

In the Matter of Arbitration

Case No.: FMCS 030508-50571-8

Between

Opinion

And

The City of Norman, Oklahoma

Award

And

September 22, 2003

International Association of

Firefighters, IAFF Local 2067

Arbitrator: Samuel J. Nicholas, Jr, Jackson, Mississippi, mutually selected by the parties under the rules and regulations of the Federal Mediation & Conciliation Service.

Representatives: For City of Norman - Hon. Tony Puckett

For the Union - Hon. James R. Moore

INTRODUCTION

This dispute between the City of Norman, Oklahoma ("City") and the International Association of Firefighters, Local 2067 ("Union") comes to interest arbitration pursuant to the terms of the Oklahoma Fire and Police Arbitration Act, notably Section 11-51-106 which states:

"In the event that the bargaining agent and the corporate authorities are unable, within thirty (30) days from and including the date of the first meeting, to reach an agreement on a contract, any and all unresolved issues shall be submitted to arbitration, upon request of either party."

Accordingly, and in conformity with Sections 11-51-107 and 108, the parties designated the herein-named Arbitrator as Chairman of a three-member arbitration board ("Board") whose given purpose is to select one of two last best offers ("LBO's") of the parties in the completion of their contract for fiscal year 2003-04 ("FY04"). The Board included Union Arbitrator Jim Keesee and City Arbitrator Russell Gale. Pursuant to Section 11-51-108, the Board duly met and conducted hearings at the City of Norman City Hall on August 15 and September 8 and 9, 2003, where and when the parties made their respective

showings and with opportunity to examine and cross-examine witnesses and to introduce relevant documentary evidence in support of their respective proposals. Union was represented by Attorney James R. Moore, and city was represented by Attorney Tony G. Puckett. The proceedings were recorded and transcribed by a licensed Court Reporter. The parties filed post-hearing briefs which were received by the Board on September 10, 2003. The record in this matter is now closed and ripe for entry of this Opinion and Award by the Board.

BACKGROUND

The matter placed before the Board concerns the parties' last best offers ("LBO") pertaining to wages and health insurance as proposed in Articles 25 and 26 of the parties' FY04 collective bargaining agreement ("Agreement").

CITY

Regarding the matter of wages, City's offer as set forth in its proposed Article 25 reads as follows:

"WAGES

Section 1. Effective July 1, 2003 All employees covered by the terms of this Agreement shall be paid on a hourly basis in accordance with the applicable annual salaries set forth in Appendix A1 (2.5% increase from FY03 pay schedules). Should the Union opt to continue participation in the City Sponsored Health and Dental Plan as specified in Article 26, Section 2 of this Agreement, then effective January 1, 2004, salaries will again be adjusted with all employees covered by the terms of this agreement being paid in accordance with the applicable annual salaries set forth in Appendix A2 (additional 1.5% increase to the pay schedules).

Section 2. Employees will be paid every other Friday, except when a payday falls on a holiday, employees will be paid on the last normal weekday prior to the holiday. It is recognized that should the employer, in conjunction with local banking institutions, provided a direct deposit option for employee paychecks, that those employees utilizing the direct deposit option will have earlier access to payroll funds than employees not utilizing the direct deposit option."

The language that City proposes covering health and dental insurance and to be incorporated into Article 26 of the parties' contract is quite lengthy. However, it is clear that the proposal consists of three major elements. (1) Benefit Adjustments; (2) Premium increases; (3) Premium reallocation between City and employees, (4) and "Opt Out" provision which would allow Union to opt out of City's insurance plan provided the bargaining unit chooses to do so.

UNION

Its proposed LBO on wages calls for a 5.5% increase across the board.

Regarding Health and Dental Insurance, Union proposes the addition of a section 3, constituting the sought changes to be made in the ongoing Plan.

"Section 3. (New) The following changes shall be made in the Health and Dental Plan for FY 2003-04:

- A. Increase brand name drug co-pay from \$20 to \$25.
- B. Increase generic drug co-pay from \$10 to \$15.
- C. Increase the mail/brand co-pay from \$20 to \$25.
- D. Increase the mail/generic co-pay from \$10 to \$15.
- E. Increase the PPO co-pay from \$20 in a network 80% after Deductible out of network to \$20/\$35 spec in network spec In network 70% after deductible out of network.
- F. Increase co-insurance from 100% in network - 80% out of network to 100% in network and 70% out of network.
- G. Increase the premiums paid into the Plan for family coverage By City and Unit members by 21% over last fiscal year."

Discussion

Under Section 51-109 of the cited statute, the Board is charged to consider five (5) major factors in evaluating the parties LBO's. They read as follows:

1. Comparison of wages, rates, insurance, retirement, other fringe benefits or hourly conditions of employment of the fire department or police department in question with prevailing wage rates or hourly conditions of employment of skilled employees of the building trades and industry in the local operating area involved;
2. Comparison of wages, rates, insurance, retirement, other fringe benefits or hourly conditions of employment of the fire department or police department in question with prevailing wage rates or

- hourly conditions of employment maintained for the same or similar work of employees exhibiting like or similar skills under the same or similar working conditions in the local operating area involved;
3. Comparison of wages, rates, insurance, retirement, other fringe benefits or hourly conditions of employment of the fire department or police department in question with prevailing wage rates or hourly conditions of employment of fire departments or police departments in cities, towns or other political subdivisions of comparable size and economic status both within and without the State of Oklahoma;
 4. Interest and welfare of the public and revenues available to the municipality, or
 5. Comparison of peculiarities of employment in regard to other trades or professions, including specifically:
 - A. Hazards of employment,
 - B. Physical qualifications,
 - C. Mental qualifications, and
 - D. Job training and skills."

The Act does not preclude Board from giving whatever weight it deems appropriate to each of the aforementioned factors. Suffice it to say that greater weight may be given to one factor over another. In this connection, on the subject of wages City urges that factor three (3) be given more weight than factor five (5). In essence it maintains that its proposal is "high" relative to wages received by firefighters of similar size and economic status. Indeed, City Exhibit #18 reflects that Union firefighters are some 2.3% over the top third of the market and 8.86% over the market average. Thus it argues that no wage increases are in order; however, it has conceded to a 2.5% increase retroactive to July 1, 2003. Also, and as reflected in its proposal on health and dental insurance, City states that firefighters could receive an additional 1.5% increase, effective January 1, 2004, provided they remain in the City's health and dental insurance plan.

City is unwilling to accept Union's proposal of health and dental insurance, including the Union's proposed 21.1% increase in premiums, due to the fact that in its view the fund is lacking sufficient funding. For

example, it would show that the plan operated with a deficit of \$44,000 at the conclusion of fiscal year 2000-2003.

Union has countered City's argument on wages relative to the positions taken on factor three (3). Chiefly, it holds that some of the data reflected in City's exhibits (e.g. No. 11) are confusing and inaccurate. It strongly maintains that upon a comparison with the City of Norman's two closest neighbors, Moore and Oklahoma City, it is clear Union firefighters herein are underpaid. Moreover, it contends that the City of Norman is behind the average of the five largest cities in the metro area by some 10.3%. At the same time, it urges that the Board give significant consideration to factor No. Two (2), particularly since the City offered no evidence in rebuttal to Union's presentation.

The Board has duly considered the parties' findings and the evidence offered thereon. Having done so, it must now select a last best offer as proposed by the parties and as mandated by statute. Notwithstanding the positive merits of each offer, it is clear that the Board may not fashion a remedy, i.e. deviate from what City and Union have set forth in their LBO's. Accordingly, the Board will comply with its statutory duty and select the LBO(s) that best serves the parties' mutual interests and bargaining relationship.

The Board was advised at the outset that the matter in contention are twofold: (1) Wages; (2) Health and dental insurance. These subjects are openly identified in the parties proposed 2003-04 contract as Article 25 ("wages") and Article 26 ("Health and Dental Insurance") respectively. These captions and delineations of the bargaining subjects are in keeping with the parties' collective bargaining history and prior labor contracts. This is to

say that heretofore the cited topics and accompanying language were dealt exclusively in separate provisions of the agreements. Now, however, City proposes that the two provisions be somewhat linked or coupled together thereby departing from the past practice and where the subjects were treated in a singular fashion.

As veterans to the collective bargaining process, the parties fully understand that state and federal law requires the parties to duly bargain over wages, hours, benefits, terms and conditions of employment. Given the parties bargaining history, it seems clear that the City is seeking to, in effect, modify Union's right to do so. Indeed, when note and attention is given to City's proposal on health and dental insurance, it is undisputed that said proposal also includes the matter of wages notwithstanding that it was the parties' intent to address wages in the given Article 25 ("wages"). Union says that such attempt is illegal. City says that it is perfectly legal and it does not place a limitation on Union's right to bargain.¹

The parties know it is not for this Board to pass on the legality of their actions and whether same are in conformity with the Oklahoma Fire and Police Statute. Such matters are left for the courts and the State Public Employees Relation Board. Our concern, and our only concern, is to make certain which LBO as submitted by City and Union can be deemed to be the most fair and reasonable relative to the five aforementioned statutory factors.

With all things considered, it is the Board's finding that Union's offer on wages and health and dental insurance must be adopted. We say this largely on the strength of the disadvantage that Union would sustain on its bargaining rights per City's attempt to link wages and health and dental insurance as set forth in its proposed language in Article 26. Rather than

address the subjects head on and allow each provision to exclusively address these concerns, City has attempted to further motivate Union for accepting its wage position with what can be constructed akin to "bonus language" per Article 26. This approach assumes, of course, that Union would fully accept City's Article 26 provisions. We do not think this comports with the parties' bargaining history and modern day public sector collective bargaining. Indeed, your Chairman has not seen such a "coupling approach" in his thirty-five year arbitral experience.

The Board has given careful scrutiny to the parties' presentation on health and dental insurance and the "pluses and minuses" seen with the reporting of claims, monies disbursed, and fund balances over reported time periods. In a matter of speaking, the parties have engaged in a "numbers game", for no finality can be seen as to current fund balance and the future of same. But upon the parties recognizing the anticipated higher costs in health care while acknowledging a due increase in premiums, together with the efficient management of the Fund in past years, there is good reason for finding that Union's LBO standing alone will provide an ample framework for the Plan's successful continuation.

In final analysis, the Board finds that Union's LBO's are the most fair and reasonable covering the subject areas in dispute (wages and health and dental care insurance).² Indeed, it can be said that Union's LBO's represent the cleanest approach to bargaining on the issues in dispute. While City's proposed insurance provision is highly regarded, it cannot be adopted since it encompasses a "bonus wage" component. The fact that City bargained successfully for a different level of wages and benefits with another bargaining agent, i.e. AFSCME, has no bearing in this instant arbitration.

Again we say this Board is governed by statute and the aforementioned criteria set forth in same. To this end, the following Award is rendered.

AWARD

Union's offer on the proposed contractual provisions, Article 25 and Article 26, are hereby adopted.

Samuel J. Nicholas, JR.
Chairman, Arbitration Panel

¹ Union's argument on the subject of "waiver of right" is impressive, but this Board need not pass on the merits of same in this limited interest arbitration.

² The arbitral decisions cited by both parties, while rather persuasive, are not controlling here. However, they are deemed persuasive relative to the parties' rights and duties for bargaining in good faith.