

**IN THE MATTER OF ARBITRATION BETWEEN:**

INTERNATIONAL ASSOCIATION OF ) FMCS Case No. 100609-57330-8  
FIREFIGHTERS, LOCAL 2067, ) Issue: Interest Arbitration  
) Fiscal Year 2011  
)  
)  
)  
) Arbitration Board:  
UNION ) Steven A. Zimmerman, FMCS Arbitrator  
) Jim Keesee, Bargaining Agent Arbitrator  
And ) Ambre C. Gooch, Employer's Arbitrator  
)  
)  
CITY OF NORMAN, OKLAHOMA )  
)  
)  
EMPLOYER )  
)

**APPEARANCES:**

For The Union:

Advocate: Mr. James Moore, Attorney

Witnesses:

Mr. James York, Police & Fire Compensation

Mr. Butch Crawford, Union President

For The Employer:

Advocate: Mr. Charles S. Plumb, Attorney

Witnesses:

Mr. Michael Bates, Labor Relations Consultant

Mr. James Fullingim, Fire Chief

Ms. Gala Hicks, Human Resources Director

Mr. Jeff Bryant, City Attorney

Mr. Frank Crawford, President, Crawford & Associates CPA Firm

Mr. Anthony Francisco, Finance Director

Mr. Steven D. Lewis, City Manager

Pursuant to Oklahoma Statute regarding Collective Bargaining, Article LI, Fire And Police Arbitration, Title 11, Section 51-107, the Arbitrators selected in this case are Mr. Jim Keesee, for IAFF, Local 2067, Ms. Ambre C. Gooch, for the City of Norman, and Mr. Steven A. Zimmerman, from a list of arbitrators provided by FMCS, acting as chairman of the Arbitration Board for this hearing.

Each member of the Arbitration Board appointed or selected to hear this case shall select one of the two last best offers as the contract of the parties according to the Oklahoma Statute regarding Collective Bargaining, Article LI, Fire And Police Arbitration, Title 11, Section 51-108 (A.) (4.). The arbitration hearing was held on October 14 – 15, 2010, at the Norman City Hall, 201 West Gray Street, Norman, Oklahoma.

All witnesses testified under oath/affirmation. The parties were given full opportunity to present oral testimony and documentary evidence. There was no argument by either party that the issue of Interest Arbitration to obtain a Collective Bargaining Agreement for Fiscal Year 2011 was not properly before the Arbitration Board. The Arbitration Board timely received the transcript of the hearing and the parties post hearing briefs were received on November 4, 2010.

## **ISSUE**

Though collective bargaining, the parties were unable to reach agreement on a new collective bargaining agreement for fiscal year July 1, 2010 through June 30, 2011. The parties are bound by Oklahoma Statutes concerning collective bargaining for fire and police personnel. The statutes require the parties to use interest arbitration as the means to reach agreement on a contract. Any and all unresolved issues shall be submitted to arbitration, upon request of either party. The unresolved issues submitted to arbitration involve Article 25, Wages ...which incorporates Appendix A-1b, Pay Grades and Article 29, Incentive Pay.

## **LIMITATION OF ARBITRATION BOARD**

The Oklahoma Statutes for collective bargaining for Fire and Police Arbitration holds the Arbitration Board to select the last best offer of one party without modification. The Board cannot add to or delete from the last best offer of either party. In addition, according to Section 51-108, the Board in its selection of a last best offer is limited to use only the criteria spelled out in paragraphs 1 through 5 of Section 51-109 of Title 11. However a close look at Section 51-109 states ... “ The factors, **among others**, to be given weight by the arbitrators in arriving at a decision shall include:”

Factor (1) Comparison of wage rates, insurance ... with prevailing wage rates of skilled employees of the building trades ... in the local area ...

Factor (2) Comparison of wage rates, insurance ... with wage rates ... maintained for the same or similar work ... exhibiting like or similar skills under the same or similar working conditions ... in the local area ...

Factor (3) Comparison of wage rates, insurance ... with wage rates ... of fire departments in cities ... of comparable size and economic status both within and without the state ...

Factor (4) Interest and welfare of the public and revenues available to the municipality; or

Factor (5) Comparison of peculiarities of employment ... to other trades or professions

- (a) hazards of employment
- (b) physical qualification
- (c) educational qualifications
- (d) mental qualifications
- (e) job training and skills

The language in Section 51-108 (A.) (4.) is clear and unambiguous in stating the criteria to be used by the Arbitration Board to select a last best offer. Section 51-109 states ... "The factors, **among others**," ... implies there may be other factors that can be given weight by the Arbitration Board in arriving at a decision ..."

## **LAST BEST OFFERS**

The Employers last best offer is found below and it was accepted by both parties into the record as joint exhibit number 1.

- 1) Article 25, Wages, Section 1. Appendix A-1b pay rates would be effective November 1, 2010 and reflects a percentage reduction across the board to all base pay rates of a minus 4.61% as compared to the FYE 2010 wage rates. Those employees who are signed up for Plan B retirement prior to or on November 1, 2010 shall have their wage rates maintained at the Appendix A-1 rates of pay.
- 2) Article 25, Wages, Section 3. ... This is a new Section to this Article. The parties agree that Effective July 1, 2010 through June 30, 2011, merit increases (step raises) for employees who would be potentially eligible for such increases shall not be processed due to City of Norman economic and financial conditions.
- 3) Article 29, Incentive Pay, Language contained in Sections 3 and 4 of previous agreement would be deleted. New language now makes up Sections 3 and 4 and a new Section 5 is added. (See joint exhibit #1 for new language to Article 25, Sections 3, 4 and 5)

The IAFF last best offer is found below and it was accepted by both parties into the record as joint exhibit number 2.

- 1) No change in the existing pay plan in which firefighters that are eligible to go to the next step in the pay plan would receive those steps.
- 2) No wage increase to the bargaining unit.
- 3) No change to Incentive Pay article.

## **BACKGROUND**

The Parties began collective bargaining for a new Labor Agreement for fiscal year 2010-2011 in February 2010. The party's fiscal year is defined as July 1, 2010 through June 30, 2011. The last contract negotiations between the parties were for FY years 2009 and 2010. The Union received a 4% increase in each fiscal year for a cost of living adjustment and step pay increases. The City's chief negotiator was Michael Bates who also chaired the FY 2011 collective bargaining. The Union's chief negotiator for the past 11 years is Butch Davis, Union president. Both chairmen are very familiar with the party's collective bargaining process and the factors to be used in collective bargaining.

Written ground rules were established by the parties for FY 2011 collective bargaining process. On February 22, 2010 the Union proposed a 6% wage increase. On March 25, 2010, the City's counter proposal was for a zero percent increase for wages and no increase for step pay, referred to as a merit increase. On April 9, the Union countered with a 4% wage increase for both cost of living and step pay. On May 10, the City counter with a wage reduction of 4.61% and no increase in step pay effective July 1, 2010. This proposal was in lieu of the Union not agreeing with the City on the issue of furloughs that was being discussed in a consultation process. The issue of employees taking furlough days was not being discussed in collective bargaining. On September 29, the City amended its proposal to change the effective date from July 1 to November 1, to begin the implementation of its wage reducing proposal. The Union had concerns from day one with how the wage reduction would negatively affect pension benefits of those employees eligible to consider retirement. As a result of those discussions, the City made their last wage proposal on October 4, where the only change addressed those firefighters who would sign up for Plan B retirement prior to or on November 1. They would not have their wages reduced. The parties could not reach agreement on a new contract and moved to have their differences resolved under the Oklahoma Statutes, Collective Bargaining, Article LI, Fire and Police Arbitration, Title 11, Section 51-101 et seq., Effective July 1, 1978.

## **THE CITY'S ARGUMENTS**

The City shared with the IAFF when times were good and now wants the IAFF to do its part and help the City because times are bad. Expenditures have been outstripping revenues that have caused the City's operating reserve fund to decline over the years to a dangerously low level. The revenue source to fund the reserves is sales tax revenue and that source is very volatile and unpredictable.

The City Council did not want to lay off employees and therefore wanted the Union to agree to furloughs. When the IAFF would not agree to furloughs, the Council turned to a wage reduction and merit freeze in the step pay plan to achieve their cost savings objective. The City put into place several cost saving initiatives but such action would only create a FY year end fund balance of \$424,386. The City stipulated the IAFF's last best offer would cost the City an additional \$330,000 in expenditures. Other non-union City employees are doing their part to help the City by taking furloughs.

The City's comparison studies of wages and benefits for firefighters show that the City's firefighters are extremely well paid, above market and in the top third of all their comparison studies. There is no revenue to pay the last best offer of the IAFF.

## **IAFF ARGUMENTS**

The law does not require the City to maintain a reserve or fund balance but does not allow it to operate at a deficit. The IAFF's last best offer recognizes the economic conditions and the City coming off a down year. The last best offer is designed to maintain the status quo of the parties by not seeking wage and benefit increases. This is a reasonable offer given the fact that the economic conditions are improving as the City has experienced six consecutive months of increase sales tax revenues before this offer was made.

The IAFF is prohibited from striking; therefore, the City is held to a higher standard of good faith bargaining. The City failed to meet this standard.

The City failed to show in its comparisons factors whereby other Cities in the State of Oklahoma facing the same or similar economic conditions were making significant cuts by reducing wage rates and/or freezing wages. No other City was reducing wages rates. A few had frozen rates. Reducing wage rates has a significant negative impact on pension benefits. The City's wage reducing proposal can cost an employee between \$75,000 and \$80,000 over the life of his/her pension benefits. The City's wage reducing proposal wasn't tied to their comparison studies. It was based solely on the economy and revenue projections for FY 2011. The City did not project sales tax revenue growth in FY 2011.

The City has 7 firefighter vacancies and a vacancy in the Fire Training Officer classification and in the Fire Inspector classification that they do not plan to fill this fiscal year. Salaries and benefits are budgeted for all these vacancies. The total compensation for these vacancies alone is enough to pay for the IAFF last best offer.

The City will end the fiscal year with more money in the fund balance than they projected when the budget was adopted by Council in June 2010, even without cutting and freezing the wages of the firefighters.

The Arbitration Board should select the last best offer from the IAFF.

## **DISCUSSION**

The City's oral testimony from its witnesses and the documentation submitted into evidence about "comparisons" outlined in factors 1, 2, 3 and 5 satisfy the Statute. What the comparisons show should not be a surprise to the City negotiator, HR Director, Financial Director, Fire Chief or City Council. It may be a small surprise to the City Manager because he only arrived in August 2007. The IAFF did not get to the level of where they are at in the comparisons in just the recent two or three contract negotiations. It has taken several and it has not been without the City's knowledge and acceptance. The fact that they are well paid and receive excellent benefits is not cause to reduce and freeze their wages. There were statements from witnesses to this effect. This temporary down turn in the economy should not be used to "gain back" what some believe were excessive gains in the past.

A look at the collective bargaining process will show that the City proposed a zero percent wage increase and to freeze the step pay increases (merit increases) on March 25, 2010. On their proposal was a hand written note saying the City Manager would review the freeze at mid year and make a determination of ability to provide any increases budget improvement would allow. Budget increases started in May; the increase in sales tax revenue, but the City's subsequent proposal dated May 10, called for a wage reduction of 4.61%. The freeze on merit increases still proposed, minus the hand written notes to be reviewed by the City Manager at mid year. This wage reduction was proposed because the IAFF refused to agree to employee furloughs at one day per month during each month of the FY 2011. The City did not approach the IAFF until April 30, 2010 to discuss the implementation of furloughs for FY 2011. The City wanted to implement furloughs as a cost saving measure for FY 2011. The cost savings the City was seeking with its furlough proposal would have been the same as a reduction in wages by the amount of 4.61%.

The IAFF rejected the issues of furloughs because of the negative financial impact it would have on employee pension benefits. The IAFF was told it was the Council's desire to have employee furloughs in lieu of employee layoffs. The Council may have taken this position because of the recent sales tax increase (PPST) to hire more firefighters and

layoffs could raise questions about the need for the new sales tax increase. No reason was given in the hearing as to why Council took this position.

On September 29, 2010 when the City proposed to change the effective date of the wage reduction from July 1 to November 1, the major problem for the City continued to be the reserves and the shrinking of the reserves. The City continued to use the amount of reserves, year end amount, to justify their wage cuts even though the revenue from sales tax continued to increase for the past six consecutive months. The City was not receptive to a wait and see approach to sales tax revenue or to give back the wage reduction if sales revenue gains were realized because the fund balance level was so low. IAFF efforts to reach agreement on a new contract were reasonable.

For several years the ending fund balances were declining because budget expenditures exceeded budget revenues. There were years of sufficient ending fund balances but that was followed by budgeting greater expenditures over the levels of budget revenues. The end result was the use of using ending fund balances to pay for expenditures that income revenue could not support. Tighter control over expenditures in past years would have helped slow the decline of ending year fund balances. The budget for FY 2011 shows estimated revenues of \$59.6 and estimated expenditures of \$64.0. To pay for the \$4.4 overage in expenditures revenue would have to come from the beginning fund balance. The reason the City wants wage reductions or furloughs from all employees, union and non-union is to use the revenue budgeted for their wages and benefits to fund the ending reserves fund. The City is trying to rebuild the ending fund balance at the cost of employee wages and benefits. Better control of expenditures is the correct way to accomplish this objective. Proceeding along this path is not in the interest and welfare of the public. Revenues are available to the City to rebuild the reserve fund.

In June 2010, Council adopted the budget for FY 2011 with an ending fund balance to be \$424,386. However, due to the increase in sales tax revenues for the first four months of FY 2011 the ending fund balance is projected to increase by \$1,600,000 even through the sales tax revenue continues to be budgeted at the same revenue level as in FY 2010. In addition, the beginning fund balance for FY 2011 improved from the adopted budget of \$3,753,850 to \$5,400,000.

The interest and welfare of the public and revenues available to the City were given greater weight than the other factors.

## **DECISION**

The Arbitration Board, with one Board member in disagreement, has selected the last best offer from the IAFF.

