

BEFORE THE ARBITRATOR

In the Matter of a Dispute Between

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL 583

and

CITY OF BELOIT

Case ID: 304.0004

Case Type: MA

AWARD NO. 7947

Appearances:

John Kiel, Attorney, The Law Office of John B. Kiel, LLC, 3300 – 252nd Avenue, P.O. Box 147, Salem, Wisconsin 53168-0147, appearing on behalf of the Union.

Susan Love, Attorney, Buelow Vetter Buikema Olson & Vliet, LLC, 20855 Watertown Road, Suite 200, Waukesha, Wisconsin 53186, appearing on behalf of the City.

ARBITRATION AWARD

The International Association of Firefighters Local 583 (hereafter referred to as the Union) and the City of Beloit (hereinafter referred to as City or Employer) were parties to a collective bargaining agreement (hereinafter referred to as the CBA) that provided for final and binding arbitration of unresolved grievances. Pursuant to the parties' request, the Wisconsin Employment Relations Commission appointed the undersigned to decide the instant grievance. A hearing on that grievance was held in Beloit, Wisconsin, on November 20, 2017. The hearing was transcribed. The parties filed briefs and reply briefs, whereupon the record was closed on January 19, 2018. Having considered the evidence, the arguments of the parties, and the record as a whole the undersigned issues the following award.

ISSUE

The parties were unable to stipulate to the issue to be decided in this case, leaving it to the arbitrator to draft it in his award. The Union framed the issue as follow:

Did the City violate the collective bargaining agreement when it unilaterally denied bargaining unit members one week of pay in 2017 in order to change from an arrears and advance payroll system to a full arrears payroll system? If so, what is the appropriate remedy?

The City framed the issue as follows:

Did the City violate the collective bargaining agreement when it implemented a new payroll processing system? If so, what is the remedy?

I have essentially adopted the City's wording of the issue, but I have added the phrase "and arrears pay plan" to it. Thus, the issue which will be decided herein is as follows:

Did the City violate the collective bargaining agreement when it implemented a new payroll processing system and arrears pay plan? If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS

The parties' 2014 – 2017 CBA contained the pertinent provisions:

ARTICLE XII – WORK WEEK

Section 1 The normal workweek shall be fifty-two.nine two (52.92) hours per week.

Section 2 There shall be a twenty-four (24) hour duty shift, two (2) twenty-four (24) hour off duty shifts. The eighteenth (18th) scheduled working shift shall be off. All employees shall be subject to emergency call-in when deemed necessary by the Chief or his/her designee.

* * *

Section 4 The following procedure will be used to establish rate of pay for twenty-four (24) hour work shift:

Fifty-two.nine two (52.92) hours equals 2.205 working days per week. Bi-weekly salary divided by two (2) equals weekly salary. Weekly salary divided by working days (2.205) equals daily rate for a twenty-four (24) hour work shift.

* * *

ARTICLE XX – WAGES AND SALARY SCHEDULE

Section 1 The salaries of the following designated collective bargaining unit employees shall be paid bi-weekly on Thursday and payroll will be distributed to the employee through direct deposit into the employee's chosen financial institution(s) by the beginning of business hours. Participation into payroll direct deposit is mandatory. If the date of deposit is a holiday, payroll will be deposited into the employee's account on the first business day prior to the holiday.

Section 2 Bi-Weekly Salary Effective:

* * *

ARTICLE XXI – MANAGEMENT RIGHTS

The Association recognizes and agrees that, except as expressly limited by the provisions of this Agreement, the supervision, management, and control of the City's business and operations are exclusively the functions of the City. The powers, rights, and/or authority herein claimed by the City are not to be exercised in a manner that will undermine the Association or as an attempt to evade the provisions of this Agreement or to violate the spirit, intent or purpose of the Agreement.

The City and the Association shall immediately enter into negotiations to replace any section of this Agreement if found to be in violation of the Wisconsin Statutes.

BACKGROUND

The City of Beloit operates a Fire Department. The Union is the exclusive collective bargaining representative for certain employees in the Fire Department.

The City pays all its employees on a biweekly basis. The payroll cycle is two weeks beginning on a Saturday and ending on a Saturday. In the Fire Department, the pay period begins at 7:00 a.m. on Saturday and ends two weeks later at 7:00 a.m. on Saturday. As an example, the first pay period in November 2017 began at 7:00 a.m. on November 4 and ended at 7:00 a.m. on November 18.

FACTS

Most employees are paid for their work after they have performed the work. For reasons not identified in this record, some of the City's employees – including the Fire Department employees – had a different system for a long time. Specifically, they were paid in a combination of arrears and advance. It worked this way: they were paid for hours they had worked in the first part of the payroll period (i.e. payment in arrears) and were paid for hours they had not yet worked in the second part of the payroll period (i.e. payment in advance). What made this payroll system “highly unusual” (as the City itself described it), is that in the second part of the payroll period, employees were being paid in advance (i.e. before they had actually performed the work that they were being paid for). Said another way, for the “advanced-salary employees,” the City's payroll system prepaids/advances wages to employees for hours that have not yet been worked.

The payroll employees who had to administer this system described it as labor intensive and inefficient. Here's why. Every day a captain creates a payroll report that records overtime, roll-ups (pay for out of class work), and accrued time used by each employee on that day. The day after this report is completed it is sent to the administrative assistant who enters the data into two systems: the payroll system and an access database for the Fire Department recordkeeping. The same process is followed for the first seven days of the pay period. The payroll records completed by the captain for the second week of payroll are held and entered on the next payroll. Overtime, roll-ups, and time off are recorded for the first week of the payroll. However, those entries are not reflected in the actual payroll cycle in which it occurs if they occur in the second week of the pay period. After the payroll entries for the first week have been entered, on the Monday of the second week of the pay period a report of payroll is run, audited, and corrections are made. The payroll is then reviewed by a supervisor. The payroll is sent to be processed at 10:00 a.m. on the Monday of the second week of the pay period. Employees are paid on the Thursday of the second week of the pay period.

Because the payroll does not accurately represent the time worked, the pay for the second week of every pay period had to be adjusted in the first week of the next pay period – for every pay period. Overtime, roll-ups, time off, and unpaid time had to manually be adjusted. The foregoing demonstrates that staff had to constantly adjust accrual records for unscheduled absences or changes to employees' schedules to accurately report and record overtime.

In the spring of 2017, city administrators began discussions about changing the existing payroll system. They decided that the existing payroll process was inefficient because of the amount of human manual entry that took place throughout the process. They further decided that the existing payroll system was not technologically driven or conducive to an automated payroll system. They further decided that the existing payroll system – whereby employees were paid in advance for a portion of the second part of the payroll period – was not fiscally responsible.

To address these problems and make the process more efficient, city administrators decided to purchase an automated payroll processing system. The system which the City purchased is designed to minimize human error, minimize the labor-intensive process of entering and

processing payroll, be more efficient, and provide greater fiscal integrity. In order to implement the new system, all employees had to be paid in arrears.

After making the decision to purchase an automated payroll processing system, the City prepared an implementation plan to eliminate advance wage payments. First, the City wanted to provide employees with time to prepare for the transaction. It was determined that implementation would occur in November because there were three paychecks that month. On June 1, 2017, the City notified all City employees – including those in the Fire Department – that it was going to be adjusting the payroll cycle for advanced-salary employees. This letter was hand delivered to each employee at which time they signed for the document. This letter provided in pertinent part:

WHO IS AFFECTED?

Only advanced-salary employees will be affected by the change to the pay period outlined in this memo. Other employees are already on an “arrears” pay cycle and there will be no changes for those employees. (An “arrears” pay cycle means that an employee works an entire pay period and is then paid on the following Thursday. Employees who are on the arrears schedule include most current and former Local 643 union members, seasonal employees and most part-time employees.)

WHAT IS CHANGING

Beginning with the November 30, 2017 paycheck, the City will no longer advance salaries by one week. Advanced-salary employees will see an adjustment to their November 30, 2017 paycheck. ***This means that for affected staff his/her paycheck paid on November 30, 2017 will equate to one week’s pay, rather than two.*** The pay cycle will be adjusted to reflect payment on the Thursday ***following*** the end of the ***complete*** pay period. The current pay date will remain the same; it is only the pay cycle that is being changed. The schedule of the current pay period and pay dates and the new schedule are as follows:

Current Payroll Schedule - "Advanced" Pay Cycle					
Pay Period	Pay Period Covered			Pay Day	
22	10/21/2017	-	11/3/2017	11/2/2017	2 weeks' pay
23	11/4/2017	-	11/17/2017	11/16/2017	2 weeks' pay
24	11/18/2017	-	12/1/2017	11/30/2017**	2 weeks' pay
25	12/2/2017	-	12/15/2017	12/14/2017	2 weeks' pay
26	12/16/2017	-	12/29/2017	12/28/2017	2 weeks' pay
	**Third Payroll of Month				

NEW Payroll Schedule - "Arrears" Pay Cycle					
Pay Period	Pay Period Covered			Pay Day	
22	10/21/2017	-	11/3/2017	11/2/2017	2 weeks' pay
23	11/4/2017	-	11/17/2017	11/16/2017	2 weeks' pay
24	11/18/2017	-	11/24/2017	11/30/2017**	1 week's pay
25	11/25/2017	-	12/8/2017	12/14/2017	2 weeks' pay
26	12/9/2017	-	12/22/2017	12/28/2017	2 weeks' pay
	**Third Payroll of Month				

WHAT IF THE DEFERMENT OF MY PAYCHECK WILL CAUSE A HARDSHIP FOR ME?

The City recognizes that this may result in difficulty for employees and hopes to minimize the impact by making this change on the last paycheck of November, which is a "three-paycheck" month. In addition, the City is providing 6 months' notice of this upcoming change. It is the City's hope that by providing this advanced notice, employees will be in a better position to plan for this change.

To avoid any hardship during the transition from the "advanced" pay cycle to the "arrears" pay cycle, the City will offer the option of a **one-time, interest-free, "final advance payment"** of approximately 75 percent of one's weekly gross pay to any affected employee. This "*final advanced payment*" is optional for employees and will also be deposited on November 30, 2017. Employees interested in taking advantage of the "*final advanced payment*" must elect to participate in the program. More information on the "*final advanced payment*" and how to sign up will be sent in the coming weeks. ...

Emphasis in original.

In September, the City issued another letter to employees regarding this matter. It provided in pertinent part:

As a reminder, beginning with the November 30, 2017 paycheck, the City will no longer advance any salaries by one week. Advanced-salary employees will see an adjustment to their November 30, 2017 paycheck. ***This means that for affected staff his/her paycheck paid on November 30, 2017 will equate to one week's pay, rather than two.*** The pay cycle will be adjusted to reflect payment on the Thursday ***following*** the end of the ***complete*** pay period. The current pay date will remain the same; it is only the ***pay cycle*** that is being changed. The schedule of the current pay period and pay dates and the new schedule are as follows:

Current Payroll Schedule - "Advanced" Pay Cycle					
Pay Period	Pay Period Covered			Pay Day	
22	10/21/2017	-	11/3/2017	11/2/2017	2 weeks' pay
23	11/4/2017	-	11/17/2017	11/16/2017	2 weeks' pay
24	11/18/2017	-	12/1/2017	11/30/2017**	2 weeks' pay
25	12/2/2017	-	12/15/2017	12/14/2017	2 weeks' pay
26	12/16/2017	-	12/29/2017	12/28/2017	2 weeks' pay
	**Third Payroll of Month				
NEW Payroll Schedule - "Arrears" Pay Cycle					
Pay Period	Pay Period Covered			Pay Day	
22	10/21/2017	-	11/3/2017	11/2/2017	2 weeks' pay
23	11/4/2017	-	11/17/2017	11/16/2017	2 weeks' pay
24	11/18/2017	-	11/24/2017	11/30/2017**	1 week's pay
25	11/25/2017	-	12/8/2017	12/14/2017	2 weeks' pay
26	12/9/2017	-	12/22/2017	12/28/2017	2 weeks' pay
	**Third Payroll of Month				

Emphasis in original.

The City implemented this new payroll processing system and arrears pay plan effective with the third payroll of November, 2017.¹ On November 30, 2017, employees were paid by the City. They did not get two weeks' pay in that paycheck like they normally got, instead they got one week's pay. By giving employees just one week's pay on that paycheck, the City recouped the week that had been previously advanced. There were 26 pay periods in 2017. All Fire Department employees were paid biweekly through 2017.

* * *

The City also sent a separate letter dated June 1, 2017, to Local 583 President Scott Smith notifying him of the change. This letter provided in pertinent part:

Because the conversion will result in an offset of the previously advanced paid hours, the pay period when the correction occurs will result in less than the normal payroll check. To allow employees adequate time to plan for the conversion, implementation of the revised pay process will take place on November 30, 2017.

The Union filed a grievance challenging the new payroll processing system and arrears pay plan in mid-June 2017. The Union never requested bargaining over the City's new payroll system or its impact.

¹ 2017 retirees were exempted from the change.

In Wisconsin, public sector retirement benefits are calculated on an employee's highest three years of earnings. Oftentimes, the three highest years are an employee's last three years of employment.

During the processing of the grievance, the Union averred that the City's decision would adversely affect future retirees. In response to that claim, the City evaluated employees who would be eligible to retire during 2018 – 2020. The City chose to review Scott Smith's final average compensation based on a potential 2020 retirement. In doing so, the City estimated the final two months of 2017 based on his regular wages and overtime for the first ten months. It was concluded that 2017 would not be one of Smith's top three years regardless of whether he was under the old payroll system or the new payroll system because 2014, 2015, and 2016 were all higher than 2017. The reason 2014 was one of the highest years was because it had 27 pay periods. Also, 2018 and/or 2019 could also be higher than 2017.

At the hearing, Smith testified that he anticipated working more overtime in November and December 2017 because those are two of the four months he historically works overtime. Smith noted that he worked four 24-hour overtime shifts in January and February 2017 and had worked one shift a month before the hearing. Thus, over a ten-month period, Smith had worked five 24-hour overtime shifts. He testified that he hoped to work four more 24-hour overtime shifts in the final five weeks of calendar year 2017. Overtime in the Fire Department is equalized. As a result, the amount of overtime that Smith would get in the final five weeks of the year would depend on whether other employees opted for the overtime work. Smith described himself as being in the middle of the overtime book.

DISCUSSION

At issue here is whether the City's new payroll processing system and arrears pay plan violated the CBA. Based on the following rationale, I answer that question in the negative, meaning I find no contract violation.

I begin my discussion with a review of the pertinent contract language.

While the parties agree that Article XX (the Wage and Salary Schedule Article) is pertinent to this dispute, the City contends that Article XXI (the Management Rights Article) is also pertinent. I'll address them in that order.

First, the Union argues that the City was restricted from implementing the new payroll processing system and wage payment in arrears because of a contractual requirement to pay wages biweekly. This argument is based on the first sentence in Article XX, Section 1, which states: "The salaries of the following designated collective bargaining unit employees shall be paid bi-weekly on Thursday and payroll will be distributed to the employee through direct deposit into the employee's chosen financial institution(s) by the beginning of business hours." On its face, this provision imposes two restrictions on the City's payment of wages. First, wages must be paid biweekly on Thursday. Second, wages must be distributed to the employees' financial institution

by the beginning of business hours (on that Thursday). That's it; those are the only two restrictions on the City's payment of wages referenced in that contract provision. Having just noted what the language says, the focus turns to what it does not say. That language does not say that the City has to continue to pay wages in advance of working them (like it had been doing prior to November 30, 2017). Also, there is nothing in the contract provision noted above that somehow limits the City's ability to implement a new payroll processing system and the wage payment in arrears.

Application of that language to the instant facts yields the following results. The City paid its employees on November 30, 2017. That pay period was two weeks after the previous pay period of November 16, 2017. Since the City paid its employees on November 30, 2017, it is apparent that the City did not change the biweekly pay cycle or stop paying on a biweekly cycle. What changed, of course, is that the paycheck on November 30, 2017, only contained pay for one week – as opposed to two weeks' pay as is the norm. The Union argues that by doing that, the employees were "shorted" a week's pay. I disagree. When the employees received their paycheck on November 30, 2017, they were not advanced pay (as had been the norm prior to that). The paycheck that employees received on November 30, 2017, paid them for every hour they had worked up to that point. Additionally, going forward, the record establishes that employees will be paid for all hours they worked in 2017 and beyond. As a result, no violation of Article XX, Section 1, has been shown.

The focus now turns to the Union's argument that the wage chart contained in Article XX, Section 2, specifies that employees are always to receive two weeks' pay. While two weeks' pay is certainly the norm, the record shows that there are times when employees don't always get a full two weeks' pay (in their biweekly paycheck). Take, for example, a situation where an employee begins working in the middle of a pay period or anywhere other than the beginning of a pay period. In that instance, the employee does not receive the two weeks' pay that is reflected in Article XX, Section 2. Additionally, if an employee leaves employment, retires, or quits before the last day of the pay period, they will not receive the full biweekly pay referenced in that contract provision. The foregoing demonstrates that, on occasion, wages may be paid at less than the biweekly rate. Building on that, I find that Article XX, Section 2, does not guarantee that employees will always receive two weeks' pay in a paycheck regardless of the hours worked. There can be exceptions and this case illustrates one of them. Thus, no violation of Article XX, Section 2, has been shown either.

To summarize Article XX then, all Section 1 requires is that employees be paid biweekly. The City complied with that contract provision when it paid the employees on November 30, 2017. As for Section 2, the wage chart contained in that provision is not a guarantee of two weeks' pay in each paycheck. Consequently, no violation of Article XX has been established.

Notwithstanding the review of Article XX just made, the crux of this case is whether the City was contractually precluded from implementing the new payroll processing system and arrears pay plan. To answer that question, I'm now going to review the contractual management rights article. It's contained in Article XXI and provides as follows:

The Association recognizes and agrees that, except as expressly limited by the provisions of this Agreement, the supervision, management, and control of the City's business and operations are exclusively the functions of the City. The powers, rights, and/or authority herein claimed by the City are not to be exercised in a manner that will undermine the Association or as an attempt to evade the provisions of this Agreement or to violate the spirit, intent or purpose of the Agreement.

This clause gives the City the express right to "control ... the City's business and operations" with the caveat that the City has to exercise its management rights so as not to undermine the Union or evade the provisions of the CBA. That clause is certainly broad enough to give the City the right to implement a new payroll processing system and pay wages in arrears.

I further find that the language contained in Article XX does not limit or restrict the City's exercise of its management rights in this case. As previously noted, while Article XX requires biweekly wage payments and sets forth a biweekly wage, that language does not state or imply that an employee is entitled to the entire wage payment whether worked or not. In fact, the CBA shows that the parties negotiated language to allow for payments of less than a full two weeks. For example, Article XII (Workweek) identifies the normal workweek and sets forth the "rate of pay for twenty-four (24) hour work shift." It then sets forth the calculation for a "weekly" salary and a "daily rate" for "working days." Thus, the workweek article recognizes daily, weekly, and biweekly rates. This language supports an interpretation that wages are paid biweekly but are calculated based on days worked. That is what the City did here.

In those instances where arbitrators have imposed implied restrictions upon managements' rights, they have often found that the employer's actions were not in good faith or for legitimate business reasons. Here, I'm persuaded that the City implemented the new payroll processing system and arrears pay plan in good faith and for legitimate business reasons. The following shows why. Notwithstanding the Union's contention to the contrary, the record shows that the former dual arrears/advance pay system was cumbersome, prone to mistakes, time-consuming and labor-intensive. Additionally, failing to make overtime payments in the pay period they are earned or pay appropriate salary rates for roll ups risks a potential wage and hour violation. The City's new payroll processing system and arrears pay plan makes that less likely to occur. Additionally, paying employees in advance of doing work was a questionable use of public funds. The City's new arrears pay plan eliminates that questionable use. Aside from those legitimate business reasons, the record also shows that the City took the following steps to lessen the financial hardship the payroll change had on employees: it gave them six months' notice of the payroll change; it offered them a loan; and it waived the payroll change for 2017 retirees. In my view, the foregoing shows good faith by the City on both its decision and the implementation of same.

* * *

Having so found, the focus now turns to the Union's remaining arguments.

First, the Union emphasizes that the City implemented the new payroll processing system and arrears pay plan unilaterally without bargaining over the matter. While that's true, it does not matter. Here's why. The City gave the Union notice of the change six months before implementation. Afterwards, the Union did not seek negotiations over either the decision itself or the impact of the decision. The Union offered no evidence about why they did not seek negotiations on the matter. Nor did they raise the issue in bargaining. The foregoing shows that the Union had the opportunity to negotiate over the matter and/or its impact, but they did not do so.

Second, the Union essentially raises a past practice argument. It contends that since the City has not previously implemented a new payroll system, or paid wages completely in arrears, then it (i.e. the City) is precluded from doing so now and in the future. The problem with this claim is that just because the City has not previously exercised its management right to implement a new payroll processing system and pay wages entirely in arrears does not mean it has waived the right to do so here. Said another way, the City's past conduct did not create a past practice which prohibits the City from exercising the right to do that in the future. It would be one thing if there was clear proof in the record that the City had expressly agreed in the past to not implement a new payroll processing system and keep paying employees in advance via such a practice. However, there is no such proof in this case that the City ever intended to waive its management right to implement a new payroll processing system or pay employees in arrears. Also, the fact that the City negotiated with the Union several years ago over direct deposit of paychecks does not change this result.

Third, the Union claims that the payment of wages in arrears would have an adverse impact on future retirees. However, all the Union offered to prove that claim was testimony which was speculative at best. I'm referring, of course, to the testimony of Local Union President Smith that he "might" work more overtime in December of 2017, and that 2017 "might" be one of his highest three years of salary. That testimony was simply insufficient to prove that the City's new payroll processing system and arrears pay plan will have an adverse impact on future retirees. In so finding, it is expressly noted that the City reviewed Smith's claim that 2017 "might" be one of his highest three years, and the City concluded otherwise based on their wage data. Specifically, the City concluded that 2017 would not be one of Smith's top three years regardless of whether he was under the old payroll system or the new payroll system because 2014, 2015, and 2016 were all higher than 2017. That conclusion obviously undercuts the Union's claim to the contrary. Additionally, the Union did not provide evidence that any other retiree could be adversely impacted by the change.

* * *

In conclusion, it is held that the City properly exercised its management right to implement the new payroll processing system and arrears pay plan. Additionally, that action did not violate Article XX of the CBA. Additionally, there is no other contract provision or practice which restricts the City from implementing that change. Hence, no contract violation has been found.

In light of the above, it is my

AWARD

That the City did not violate the CBA when it implemented a new payroll processing system and arrears pay plan. The grievance is therefore denied.

Signed at the City of Madison, Wisconsin, this 29th day of March, 2018.

Raleigh Jones, Arbitrator