

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

CITY OF OSHKOSH

and

LOCAL NO. 316, INTERNATIONAL
ASSOCIATION OF FIRE FIGHTERS

Case 141
No. 43972
MA-6132

Appearances:

Mr. Warren Kraft, Assistant City Attorney, on behalf of the City.

Mr. Thomas F. Roblee, Representative, on behalf of the Union.

ARBITRATION AWARD

The above-entitled parties, herein the City and the Union, are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, I heard this matter on August 17, 1990, in Oshkosh, Wisconsin. The hearing was not transcribed and the parties presented oral argument in lieu of briefs. At the conclusion of the hearing, I issued a "bench" decision dismissing the grievance, which this written Award augments.

ISSUE

Since the parties were unable to jointly agree upon the issue, I have framed it as follows:

Did the City violate the contract when it scheduled firefighter training certification on Saturdays and, if so, what is the appropriate remedy? 1/

1/ The parties at hearing settled two (2) other issues raised by the instant grievance. As a result, they are not dealt with here.

DISCUSSION

As part of its overall and continuing education program aimed at firefighter certification, the City in the spring of 1990 scheduled Saturday training sessions which ran for about two (2) months and which all on-duty firefighters were required to attend. The Union filed a grievance on March 22, 1990, which, inter alia, charged that such scheduling violated Articles II, IV, X and XIII of the contract.

As I ruled at the hearing, there is no merit to the grievance.

Thus, the record establishes that the City in the past has scheduled Saturday training sessions for advance cardiac training, for flammable liquids' training, for the EAA convention for airport training, and for probationary employees to observe house burnings. Given this long-standing practice, much of which dates back for about a decade, the City was free to again schedule Saturday training pursuant to Article II of the contract entitled, "Management Rights", which gives it the right "to operate City government and all management rights repose in it. . . but such rights must be exercised consistently with the other provisions of this agreement. . ."

Here, the only other contract provision on point is Article XIII, entitled "Present Benefits", which states that:

"The parties agree to maintain the present level of benefits and policies that primarily relate to mandatory subjects of bargaining, not specifically referred to in this agreement. This provision is expressly limited to mandatory subjects of bargaining."

The Union relies on this language in support of its claim that this is the first time that the City has ever scheduled Saturday training on a regular basis and that it therefore violates this past practice language.

To the contrary, this language on its face clearly and unequivocally states that only matters involving mandatory subjects of bargaining represent binding past practices. The determination of what tasks are to be assigned to firefighters as part of their normal scope of duties, however, constitutes a permissive subject of bargaining because employers, in the absence of any other clear contract language to the contrary, have the inherent managerial prerogative to make any such work assignments. That being so, the City was entitled to schedule Saturday firefighter certification training sessions as part of a firefighter's normal job duties.

In light of the above, it is my

AWARD

That the City did not violate the contract when it scheduled firefighter certification training on Saturdays; the grievance therefore is denied.

Dated at Madison, Wisconsin this 24th day of August, 1990.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator