

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

CITY OF KENOSHA (FIRE DEPARTMENT)

and

KENOSHA PROFESSIONAL FIREFIGHTERS
UNION, LOCAL NO. 414, IAFF

Case 153
No. 44345
MA-6258

Appearances:

Davis & Kuelthau, S.C., Attorneys at Law, 111 East Kilbourn Avenue, Milwaukee, Wisconsin 53202, by Mr. Roger E. Walsh and Ms. Jane M. Knasinski, appearing on behalf of the City of Kenosha.

Mr. John Celebre, President, Local 414, International Association of Firefighters, 8845 41st Avenue, Kenosha, Wisconsin 53412, appearing on behalf of Local 414.

ARBITRATION AWARD

Pursuant to the provisions of Article 16 of the collective bargaining agreement between the parties the years 1989 through 1991, the City of Kenosha (hereinafter variously referred to as the City or the Employer) and Local No. 414 Kenosha Firefighters, International Association of Firefighters (hereinafter referred to as the Union) requested that the Wisconsin Employment Relations Commission designate a member of its staff to serve as arbitrator of a dispute concerning a claim for an additional compensation for members of the First Responder units in the City of Kenosha. The undersigned was so designated. A hearing was held on October 4, 1991 at the City Hall in Kenosha, Wisconsin at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute. No stenographic record was made of the hearing. The parties submitted post-hearing briefs, which were exchanged through the undersigned on December 4, 1990, whereupon the record was closed.

Now, having considered the evidence, arguments of the parties, pertinent contract language and the record as a whole, the undersigned makes the following arbitration award.

ISSUE

The parties stipulated that the following issue was to be decided herein:

Are Kenosha Firefighter employes, except paramedics, assigned to a First Responder unit, i.e., an Engine or Ladder Company, entitled to additional compensation prescribed in Section 11.05 of the collective bargaining agreement? If so, what is the appropriate remedy under the contract?

STIPULATIONS OF FACT

The parties entered into the following stipulations at the hearing:

1. The Kenosha Fire Department's First Responder Program was started on May 1, 1990.
2. Non-paramedics assigned to Med Units or Rescue Units do receive pay under section 11.05 of the labor agreement.

3. Paramedics do not receive pay under section 11.05 of the contract.
4. The City has never paid section 11.05 payments to anyone assigned to First Responder units.
5. The Kenosha Fire Department's First Responder units are: Engines 1, 2, 3, 4, 5 and six; and Ladders 1 and 4.
6. The grievant was assigned to a First Responder unit at the time of the filing of this grievance.
7. The Kenosha Fire Department has three (3) Advanced Life Support Units (Med 3, Med 4, and Med 5) and one reserve Basic Life Support unit (Rescue 6).
8. Med and Rescue Units are not First Responder units.
9. When dispatched as a First Responder, personnel provide Emergency Medical Services (EMS) to victims in the field to the extent of their certification or training, as necessary.
10. The City will not allow persons not certified as an Emergency Medical Technician/Defibrillation Automatic (EMT/DA) or Paramedic to use Automatic Defibrillators.

BACKGROUND FACTS

The City is a municipal corporation providing general governmental services to the people of Kenosha, in Southeastern Wisconsin. Among the services provided is fire suppression, through the City of Kenosha Fire Department. The Union is the exclusive bargaining representative for firefighters in the Department, excluding the assistant chiefs, the chief, training coordinator, and the apparatus and equipment supervisor. The grievant, John Celebre, is the Union's president.

In 1988, the City and the Union negotiated the implementation of paramedic service by the Fire Department. These negotiations resulted in a memorandum of understanding which was made part of the collective bargaining agreement. In 1989, the City notified the Union that it intended to use Engine and Ladder companies to respond to calls for emergency medical services, under a "First Responder" Program. The City invited negotiations over the proposed implementation, but the Union declined. On October 24, 1989, the City conveyed to the Union the terms under which they intended to unilaterally implement the First Responder Program. A grievance was filed, which is still pending.

The grievant was assigned to a First Responder unit in May of 1990, and applied for additional payments of \$5.00 per day under Article 11.05 of the labor agreement. That Section allows additional payment for "any employee assigned to and actually working on rescue squad duty for more than twelve (12) hours during a duty day . . ." the grievance was denied and referred to arbitration for resolution.

Additional facts as necessary will be set forth below.

PERTINENT CONTRACT PROVISION

. . .

11.05 Any employee assigned to and actually working on rescue squad duty for more than twelve (12) hours during a duty day shall receive an additional \$5.00 for such day. In the case of two

employees assigned to and actually working twelve (12) hours each on rescue squad duty in the same duty day, then each employee shall receive an additional \$2.50 for the day.

POSITIONS OF THE PARTIES

The Position of the Union

The Union takes the position that First Responder duty is identical to "rescue squad duty", and that employees assigned to First Responder units should therefore receive the rescue squad pay provided in Section 11.05 of the labor agreement. The Union urges that the substance of the duties, rather than the title assigned to those duties by the City, should control whether the payment is due.

When Section 11.05 was first negotiated, the rescue squads were the only units that responded to what are now referred to as "emergency medical service (EMS) calls". These calls are now the responsibility of Med units, which are staffed by both paramedics and non-paramedics. Non-paramedics assigned to Med units are restricted from having any patient contact. While they may assist in carrying patients and equipment from the ambulance they may not administer actual treatment of any type to a patient. This includes the administration of CPR, even though all Fire Department personnel are trained in CPR.

Paramedics assigned to the Med units are not eligible for Section 11.05 pay, because of an award by Arbitrator Raleigh Jones. Arbitrator Jones ruled that the Union had waived such pay by negotiating over EMT pay during bargaining over the implementation of the paramedic program, and thus had "implicitly acknowledged that the paramedic premium was exclusive of the rescue squad pay."

Personnel assigned to First Responder units are expected to provide emergency medical services to the level of whatever certification they may hold. This includes paramedic services, defibrillation, and CPR. The Union argues that it is senseless to pay the rescue squad premium to personnel assigned to Med units who are barred by state regulations from providing patient care, but not to personnel working as First Responders and providing direct patient care.

Buttressing the claim for rescue squad pay is the fact that the First Responder Program has greatly increased the workload of employees assigned to First Responder units. First Responder calls constitute 53% of the Engine and Ladder company calls, with the remainder being fire calls. In the first four months following implementation of the First Responder Program, the total number of runs for each First Responder unit was up 35%. By any measure, the First Responder Program has had a dramatic effect on the employees' workload.

The Union also points out that the content of the workday is affected by First Responder duty. The increase in the number of runs means a greater exposure to traffic accidents for unit employees. The risk of infection is, obviously, greatly increased when personnel are responding to medical calls rather than fire calls. Furthermore, First Responder calls can often involve acts of violence such as gunshots, stabbings, assaults and suicides. First Responder personnel are therefore subject to the risks associated with encountering violent people and situations.

The Union acknowledges that it refused bargain implementation of the First Responder Program with the City. This was done for legitimate tactical reasons, since failure to reach agreement during such negotiations would have opened the door to unilateral City implementation without any right of recourse by the Union. The Union's decision to stand on its rights under the contract as it currently exists cannot be second-guessed in this proceeding.

For all of the foregoing reasons the Union asks that the grievance be granted and an Order entered requiring payment of rescue squad pay to personnel assigned First Responder units.

The Position of the City

The City takes the position that employees assigned to a First Responder unit are not entitled to additional compensation under Section 11.05, because Section 11.05 does not apply to First Responder units. The plain language of the agreement restricts its application to rescue squad duty. Rescue squad duty, as it is currently understood, is the assignment of non-paramedic personnel to a rescue squad, otherwise known as a Med unit. First Responder units are distinct from rescue squad units and thus there is no obligation to make the payment requested by the Union. As the language of the contract is clear on this point, the grievance should be dismissed.

The City notes that the Union attempted to negotiate compensation for First Responder units when the parties negotiated implementation of the original paramedic program. In August of 1988, the Union proposed:

In the event that the Fire Department adopts a policy of dispatching apparatus other than rescue squad to EMS calls, those assigned to those other apparatus shall be eligible for rescue squad pay.

This proposal was rejected by the City and the ultimate agreement on paramedics makes no mention of it. The Union, subsequent to the paramedic agreement, attempted to extend Section 11.05 payments to paramedics working on the Med units. That attempt was rejected by Arbitrator Raleigh Jones in part because the Union had tried and failed to negotiate payments for emergency medical personnel and failed to secure said payments. This City notes that arbitrators will usually hesitate to read into a contract any provision which was sought unsuccessfully in negotiations.

The City argues that the Union has not only failed to secure additional payment for emergency medical services personnel (other than rescue squad personnel) in negotiations over the paramedic program, but also failed to pursue any such proposal in contract negotiations over the labor agreement or subsequently in negotiations over the implementation of the First Responder Program. The Union in fact waived negotiations over the First Responder Program by refusing to enter into bargaining with the City. Reviewing this negotiating history, the City asserts that there is nothing to suggest any mutual intent to extend rescue squad pay beyond personnel directly assigned to the Med units.

Turning to workload arguments of the Union, the City asserts that these are arguments better suited to an interest arbitration proceeding than to a grievance arbitration proceeding. While not conceding any increase in workload, the City claims that the Union arguments over increased numbers calls and more difficult job content go to the merits of whether the parties should negotiate some additional compensation to these personnel, rather than the question of whether they did negotiate such compensation when they bargained Section 11.05.

For all of the foregoing reasons the City asks that the grievance be denied.

DISCUSSION

The contract provides, in Article 11.05:

. . .

11.05 Any employee assigned to and actually working on rescue squad duty for more than twelve (12) hours during a duty day shall receive an additional \$5.00 for such day. In the case of two employees assigned to and actually working twelve (12) hours each on rescue squad duty in the same duty day, then each employee shall receive an additional \$2.50 for the day.

While the Union argues, with some apparent justification, that First Responder duty has affected the workload, any entitlement to pay under the existing contract language must turn on whether "First Responder Duty" is the same as "Rescue Squad Duty" for the purposes of Article 11.

It is undisputed that rescue squads in the City of Kenosha have in the present day evolved into three Med units and one reserve basic life support rescue unit. Personnel assigned to these units receive either the premium under Section 11.05 or paramedic pay per the Memorandum of Understanding negotiated between the parties. These personnel man rescue units and, from the evidence of the record, are responsible solely for the provision of emergency medical services. The makeup of the squad crew and the services that the crew members can provide are regulated by state statute. The First Responder units perform a mixture of fire suppression and emergency medical services, with the level of services being determined by the level of certification possessed by the unit members.

While there is certainly a degree of overlap in the duties of the First Responder units and the Med units, it is factually incorrect to state that the two are identical. This was recognized by the parties themselves in negotiations over the original paramedic program, when proposals were made to apply Section 11.05 to firefighters assigned to First Responder duties with units other than a Med unit. This negotiation history is not cited to show any waiver by the Union, but rather as an indication that both parties understood that there was a distinction between the rescue squad/Med unit, and the Engine or Ladder companies functioning as First Responder units. Given that the parties both currently and in the past have recognized rescue squads as being distinct from other assignments involving emergency medical services, the undersigned cannot interpret the term "rescue squad duty" used in Article 11.05 as being synonymous with "First Responder duty". The plain language of Article 11.05 limits the \$5.00 premium to personnel on Med units and the reserve basic life support rescue unit.

The essence of the Union's case is that the duties and workload associated with assignment to a First Responder unit should merit compensation on the same basis as that provided in the contract for rescue squads. Without expressing any opinion on the substance of the Union's claim, the undersigned must agree with the City that this is an argument for negotiations or an interest arbitrator. This issue in this grievance arbitration is whether the contract as currently written provides for such compensation. The clear language of the contract restricts such additional pay to employees assigned to and working on the rescue squad. Accordingly, the grievance is denied.

On the basis of the foregoing and the record as a whole, the undersigned makes the following

AWARD

Kenosha Fire Department employees, except paramedics, assigned to a First Responder unit, i.e., an Engine or Ladder Company, are not entitled to additional compensation prescribed in Section 11.05 of the collective bargaining agreement. Accordingly, the grievance filed herein is denied.

Signed and Dated this 20th day of May, 1991 at Racine, Wisconsin.

By Daniel Nielsen /s/
Daniel Nielsen, Arbitrator