BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
LOCAL #414, KENOSHA FIRE FIGHTERS, IAFF	Case 156 No. 44778 MA-6414
and	
CITY OF KENOSHA	

Appearances:
Mr. John Kiel, Local #414 Representative, and Mr. Richard V. Graylow, Lawton
Mr. Roger E. Walsh, Davis & Kuelthau, S.C., Attorneys at Law, appearing on beh

ARBITRATION AWARD

The Union and the City named above are parties to a collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties jointly requested that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve a grievance over trading shifts. The undersigned was appointed and held a hearing on May 15, 1991, in Kenosha, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. The parties completed their briefing schedule on July 24, 1991.

BACKGROUND:

Grievances filed by Alan Horgen and John Kiel have been combined in this arbitration. The grievances involve a policy regarding trading shifts which the City unilaterally implemented in 1989. Fire Chief Richard Thomas defined trades as the trading of duty time, when one individual trades duty time with another individual of equal classification.

On April 15, 1975, former Fire Chief Frank Blasi posted guidelines for trading of on-duty tours. These guidelines were not bargained, but were unilaterally established by Blasi and not grieved by the Union. As Lieutenant Richard Bosanko described it, officers had to trade within rank, EMT's were allowed to trade out of rank if approved by shift officers, but trading was allowed only within a fire station. On October 8, 1987, former Fire Chief Michael Massey revised the trading policy unilaterally to allow for trading out of stations when Station #2 opened. The Union did not grieve this policy.

On November 17, 1989, Massey issued a memorandum to all Fire Department personnel regarding the following trading policy, which is the subject of this grievance:

> Whenever there is a posted structured Education/Training assignment that is in the best interest of the Kenosha Fire Department, trades will be allowed under the following conditions:
> 1. A trade must be made with another individual who has the same module or trading assignment.
> 2. Completion of a trade form.
> 3. Signature approval from the officers (2) of the effected shifts.
> 4. Maintaining the trade form on file at the station of the individual who is requesting the trade.
>
> An example of when this policy would become effective is when there are courses that a course

> registration and payment is made with an outside agency such as Gateway Technical College. This policy would apply for the EMT Refresher and EMT Defibrillation courses that will soon be taught. Although the association with an outside agency leaves us with minimal flexibility in course changes, in the event of an emergency, please contact your assistant chief to make arrangement.
>
> Attached you will find a copy of the trade form (form omitted here) to be utilized when making trades during such periods.
>
> If you have any questions, please contact of the A/C's or myself.

Although shift officers previously had to approve of trades, no trade request forms had been used in the past, and there were no differences in the trading allowed during different times of the year under the past policies. With the new policy, each shift officer had to sign a form, and fire fighters could only trade with someone in his or her own module and training classes.

In response to the Horgen grievance filed over the trade restrictions, Chief Massey sent Union President John Celebre a letter on July 31, 1990, which in part, explains the reasons for the new guidelines:

> However, management recognizes the concerns Local #414's membership has in the area of time trades. It should be noted that management is amending the trade policy in order to provide employees with training that enhances the quality of our services. This is training which may requires us to contract with outside agencies, such as Gateway Technical College. We seek to minimize the occurrence of employees needing to make-up missed classes.
>
> We have selected the first three comp cycles of each year for this type of training. It does not coincide with prime holiday, recreation, and vacation periods. The weather usually dictates that training activities be confined to the classroom.
>
> As we discussed during negotiations for the paramedic program, personnel would generally prefer not to use their assigned comps during these first three comp cycles. By allowing personnel to defer comp times into other times of the year we also reduce the overall frequency of missed training sessions. We believe this to be a practical way to address departmental needed and, at the same time, to provide employees with the benefit of deferring comps to a more desirable time of the year.
>
> It is unlikely that each and every employee will need to attend mandatory training or make-up classes every year. For example, EMT's recertify every two years. Only half of the EMT's will receive training in any given year. Yet, every employee, whether they are scheduled for training or not, will be able to defer their comps.

> Personnel are not restricted from using their leave time during the first three comp cycles. Employees may still make time trades. Restrictions only apply to scheduled training days.
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> In summary, management is exercising its right to amend the trading policy in order to provide essential training. This training is necessary for the delivery of quality services to the community. We recognize employee concerns and are willing to provide a comp deferral policy.

The parties agree that the rules and regulations are treated like other contractual provisions, and that the City cannot unilaterally change them if the changes have an impact on working conditions. During bargaining for the 1989-91 contract, the City proposed that it be given the right to unilaterally change rules and regulations, but that proposal was rejected by the Union, and no changes were made to Article 25.02. No changes have been made in the applicable rules and regulations between the 1987-1988 and 1989-1991 collective bargaining agreements.

Fire Chiefs have made unilateral changes in vacation guidelines and compensatory holiday guidelines without negotiating them with the Union, such as a compensatory holiday cycle for 1988, and the 1989 vacation and compensatory guidelines for Stations #2 and #6, as well as a 1990 compensatory holiday cycle including an option to holdover compensatory holidays. Although Union President John Celebre and City Personnel Director Charles Grapentine signed a tentative agreement concerning a paramedic program which was attached to the vacation and compensatory guidelines, the paramedic agreement was not signed as part of the vacation and compensatory guidelines. The 1989 vacation guidelines incorporated substantive changes negotiated in the paramedic program. Lieutenant Joseph Kiser, an active Union member, testified that no grievance was filed over these vacation and compensatory guidelines because the Union agreed with the guidelines. Grievant John Kiel pointed out that a grievance was filed over vacation and compensatory holiday cycles for 1991, but the Union withdrew the grievance and reserved the right to refile it should the changes adversely affect Union members.

ISSUE:

The Arbitrator will address the following issue:

> Did the City violate the collective bargaining agreement by promulgating, issuing, distributing, and implementing the trading policy dated November 17, 1989? If so, what is the appropriate remedy under the contract?

CONTRACT PROVISIONS:

ARTICLE 4 -- MAINTENANCE OF STANDARDS

> 4.01 The City agrees that all conditions of employment in the unit of bargaining covered by this agreement relating to wages, hours of work, overtime, and general working conditions shall be maintained at not less than the highest standards in effect at the time of the signing of this agreement. As to any item not covered by this agreement, reference may be made by either

party to past procedure, departmental policy, City Ordinances or Resolutions, and State Statutes as guidelines in attempting to settle a particular dispute.

ARTICLE 25 -- ORDINANCES AND RESOLUTIONS

25.01 The Ordinances of the City of Kenosha which apply to Fire Department Personnel are incorporated herein by reference to have the same force as if set forth in full. The Rules and Regulations of the Fire Department are incorporated herein by reference and made a part of this contract and attached hereto, designated as Supplement No. 1.

25.02 Neither party shall terminate or modify any terms of this Agreement or conditions of employment of the employees subject to this Agreement during its term, unless mutually agreed to.

25.03 Any Resolution relating to fire fighting personnel, the terms of which are not covered by this Agreement, shall be null and void.

RULES AND REGULATIONS

. . .

IV. CAPTAINS

. . .

> They shall permit the trading of duty time for themselves and their subordinates within current guidelines, policies and procedures as determined by the Office of the Fire Chief.

THE PARTIES' POSITIONS:

The Union asserts that the collective bargaining agreement locks in working conditions as they existed at the time of the signing of the agreement, and does not allow the unilateral change of any condition by either party during its term. When the City unilaterally restricted and diminished the trading policy in effect as of April 27, 1989, the date the agreement was signed, it violated Article 4 of the agreement as well as Article 25.02 of the agreement. As of April 27, 1989, trading was not restricted to the same module or training assignment.

The Union argues that the City realized the error of its way when the Chief attempted to impose such a restriction, and the City attempted to free itself at the bargaining table by seeking to modify Article 25.02 by proposing that the Union would recognize the right of the City to establish new rules and regulations and revise them. However, the City was unable to secure this change at the bargaining table. The Union concludes that the City paid no attention to Article 25.02 in its haste to create and implement the 1989 restrictions on the trading practices, which it knew it could not implement without fire fighter approval. When approval was not given, it proceeded unilaterally, and such unilateral activity has no place in a collective setting.

The City contends that the contract recognizes the right of the Fire Chief to unilaterally establish and revise trade policies. Under Section IV of the Rules and Regulations, captains are allowed to permit trading of duty time within current guidelines, polices and procedures as determined by the Chief. The Rules and Regulations are incorporated into the bargaining agreement in Section 25.01, they have always been considered just like all other provisions of the contract, and changes in the Rules have to be negotiated.

The City asserts that the use of the word "current" in Section IV of the Rules refers to an ever-changing situation, not one set in stone at a particular point in time. Additionally, the Fire Chief's authority to determine the trade policy is similar to the Chief's authority on exchanging vacation periods and compensatory days. Rule XII refers to the current guidelines set forth by the Chief, and allows for the unilateral establishment of vacation and compensatory exchange guidelines by the Chief. The Chief has exercised this unilateral authority without challenge by the Union.

In reply, the Union argues that the plain meaning of "current" as used in the Rules refers to the single point in time that the rules were promulgated, and cannot mean anything else because of Article 4. The Union states that the City's argument regarding vacation policies fails, as vacations are not trades, the word "current" in the vacations policy should mean the same as in the trades policy, and no unilateral changes have been permitted or made in the vacations policy since 1989.

The fire fighters would loose the benefits of a liberalized trading policy under the City's construction, the Union asserts in noting that employee forfeitures are to be avoided if possible. Moreover, the entire agreement is to be used, and the City would have the Arbitrator disregard the language of Article 4.01. Thus, the Union concludes that the captains and the Chief have discretion to improve the trading policy, but they cannot restrict it because of Article 4.01.

In its reply, the City claims that the Rule gives the Chief the right to unilaterally set and revise guidelines, policies and procedures regulating trades, and the use of the words "current" and "as determined by" would be meaningless if the Chief were restricted in the manner advanced by the Union. It is the Union and not the City that it trying to terminate or modify an existing provision of the bargaining agreement. The right of the Chief to revise the trading policy must continue to exist.

The City asserts that the general maintenance of standards provision cannot be used to modify or extinguish rights that are specifically provided for in other parts of the bargaining agreement, and the unilateral right of the Chief to establish and revise the trading policy is an express contractual right incorporated into the bargaining agreement by Section 25.01. Section 4.01 does not modify or limit that right.

DISCUSSION:

A general maintenance of standards clause, such as Article 4 of the labor contract, cannot govern or control where another clause in the contract specifically governs the matter, just as specific language takes precedence over the general language of a management rights clause. Rule IV specifically refers to the trading of duty time, and the parties agree that the Rules and Regulations are part of the contract and must be negotiated to be changed. Therefore, the specific language of Rule IV must take precedence over Article 4, the maintenance of standards clause. The Union recognizes that Article 4 refers to unexpressed practices, rules and guidelines being frozen at the time of the signing of the collective bargaining agreement, and the trade policy is an expressed part of the agreement in Rule IV.

Rule IV calls for captains to permit "the trading of duty time for themselves and their subordinates within current guidelines, policies and procedures as determined by the Office of the Fire Chief." The City construes the word "current" to mean running, flowing, ever-changing. The Union believes that the word "current" means current at the signing of the agreement. However, if "current" meant the current guidelines at the time of the signing of the agreement, the Chief would never be able to change those guidelines, which would negate the part of the Rule which says "as determined by the Office of the Fire Chief."

Actually, the Union agrees that the Chief may change the guidelines, but only to liberalize them so that they do not conflict with Article 4. The Union cannot have it both ways -- the word "current" cannot mean either frozen at the time of the signing of the Agreement, or that the guidelines can be changed but only if they are an improvement for the Union. That would allow the Union to constantly improve the trade policy without ever having to bargain over it, which is exactly what was happening. Every time the trade policy was changed, it liberalized the policy, and no grievances filed until the Chief changed the policy and made some restrictions which were less favorable to employees.

In two instances, the parties have used a term to reflect a frozen status of something -- once in the maintenance of standards clause, where the parties

used the term "standards in effect at the time of the signing of this agreement," and once in a memorandum of understanding negotiated for the paramedic program. In the Memorandum dated September 21, 1988, the parties state: "During the classroom portion of the first Paramedic class, employees not involved in the training will be given the option of taking those compensatory holidays that fall during said training at a time later in the year consistent with the policy in effect at the time of this agreement." (Emphasis added.) Rather than use the term "current," the parties referred specifically to something done at the time of the signing of the agreement to clearly denote their intentions that those matters not be changed during the term of the agreement.

But in two other relevant instances, the parties used the term "current" -- in Rule IV regarding trading of duty time, and in Rule XII, which states: "Personnel desiring to exchange vacation periods, and compensatory days, shall make application for the same to the officer in charge in accordance with the current guidelines set forth by the Chief." And the Fire Chiefs have, from time to time, set forth guidelines for a trading policy and vacation and compensatory holiday cycles.

Furthermore, the Chief did not change the trade policy for an arbitrary reason, but did so in order to get personnel trained in accordance with the technical college offering the training.

Accordingly, the Arbitrator concludes that there has been no violation of the collective bargaining agreement when the City promulgated, issued, distributed, and implemented the trading policy dated November 17, 1989.

AWARD

The grievances are denied.

Dated at Madison, Wisconsin this 20th day of August, 1991.

By _____
Karen J. Mawhinney, Arbitrator

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