BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, AFL-CIO, KAUKAUNA LOCAL 1594	Case 60 No. 45385 MA-6581
and	
CITY OF KAUKAUNA (FIRE DEPARTMENT)	

Appearances:

Mr. Charles Buss, Vice-President, 5th District International Association of Fire Fighters, 501 Prairie Avenue, Fond du Lac, Wisconsin 54935, appearing on behalf of the Union.

Mr. Bruce K. Patterson, Employee Relations Consultant, 3685 Oakdale Drive, New Berlin, Wisconsin 53151, appearing on behalf of the City.

ARBITRATION AWARD

The International Association of Fire Fighters, AFL-CIO, Kaukauna Local 1594, hereafter the Union, and the City of Kaukauna (Fire Department), hereafter the City or Employer, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances arising thereunder. The Union, with the concurrence of the City, requested the Wisconsin Employment Relations Commission, hereafter Commission, to appoint a staff member as single, impartial arbitrator to resolve the instant grievance. On March 29, 1991, the Commission appointed Coleen A. Burns, a member of its staff, as arbitrator. Hearing was held on June 12, 1991 in Kaukauna, Wisconsin. The hearing was not transcribed and the record was closed on July 22, 1991, upon receipt of post-hearing written argument.

ISSUE:

The Union proposes the following statement of the issue:

> Did the Employer violate a past practice which has become an implied term of the contract when it denied paramedics on duty the right to attend monthly paramedic meetings?

The Employer proposes the following statement of the issues:

> Is the grievance arbitrable?

RELEVANT CONTRACT PROVISIONS

> Article 23-Grievance Procedure
> Step 3-Arbitration: The arbitrator, in arriving at his determination shall rule only on matters of application and interpretation of this Agreement. The findings of the arbitrator shall be final and binding on both parties.
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> . . .
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> Article 27-Binding Clause:
> It shall be inherent in this Agreement that all articles and the provisions thereof are binding on both parties to the Agreement.
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> . . .
>
> Article 30-Rights of the Employer:
> Subject to other provisions of this contract, it is agreed that the rights, function and authority to manage all operations and functions are vested in the employer and include, but not limited to the following:
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> . . .
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> B. To manage and otherwise supervise all employees in the bargaining unit.
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> . . .
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> E. To maintain the efficiency and economy of the City operations entrusted to the administration.
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> . . .
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> G. To take whatever action may be necessary to carry out the objectives of the City Council in emergency situations.
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> H. To exercise discretion in the operation of the City, the budget, organization, assignment of personnel and the technology of work performance.

POSITIONS OF THE PARTIES

Union

Management argues that because the contract is silent on the practice of allowing fire fighters to attend training sessions while they are on duty, the Union has no right to grieve the issue. The Union maintains, however, that day-to-day practices mutually accepted by the parties can attain the status of contractual rights and duties. Particularly where, as here, they are not at variance with any written provision of the contract, are long standing, and were not changed during contract negotiations.

The Chief's testimony demonstrates that no employe has been denied the right to attend training classes as long as his absence left four men remaining

on duty. If management can accept the fact that four fire fighters will be on duty when an employe is on vacation or sick leave, how compelling is the need to change the long standing practice of allowing four men to be on duty when an employe goes to a training session? The City's position in this case is inconsistent and demonstrates no compelling need to eliminate the long standing past practice of allowing employes to attend training sessions while on duty.

If management feels the need to alter an existing past practice, it must bring a proposal to do so to the bargaining table. It is a violation of State Statute 111.70 for management to impose upon the Union a unilateral change in a past practice that relates to a condition of employment which is a mandatory subject of bargaining.

The grievance should be sustained. The City should be ordered to allow duty employes to attend training classes.

City

The Union has grieved the Chief's decision on a matter not specified in the Agreement between the parties. The Union's reliance on past practice is inappropriate because the Agreement contains no provision allowing the arbitrator the authority to rule on matters other than "application and interpretation of the Agreement." Neither element is present in this case. The grievance is not arbitrable.

The Union attempts to analogize a case which is governed by contract language not present in the Agreement between the City and the Union. The award relied upon by the Union is of no value or relevance to this case because the issues relate to specific written provisions of the labor agreement and an employer's written policy.

In January of 1991, the Fire Chief, acting in accordance with rights set forth in Article 30, determined that on-duty paramedics would not be allowed to attend monthly meetings held at various medical centers in the Fox Valley region. The Chief's decision was based on several factors. First of all, attendance of the meetings can require an absence of up to four hours which creates an exposure to overtime call-in. Secondarily, the meetings are not required for on-duty persons. Thirdly, is the impact of the recently imposed State of Wisconsin Administrative Code Provision known as ILHR 30.

By keeping four employes on duty, the Chief is more likely to accomplish his goals of responding to situations in a timely and efficient manner. The Chief acted within the scope of the provisions of Article 30 of the Labor Agreement and the grievance must be dismissed.

DISCUSSION

In arguing that the past practice has become an implied term of the parties' agreement, the Association is raising an issue which involves "matters of application and interpretation" of the parties' agreement. Accordingly, the undersigned is persuaded that the issues raised in the grievance fall within the jurisdiction granted to the arbitrator by the language of Article 23. The grievance is arbitrable.

Having concluded that the grievance is arbitrable, the undersigned turns to the merits of the grievance. The Paramedic Medical Director does not require on-duty paramedics to attend paramedic training sessions. Prior to January, 1991, the Chief permitted an on-duty paramedic to leave work to attend paramedic training sessions if there were four employes remaining on duty. In January of 1991, the Chief instituted a new policy in which he no longer permitted an on-duty paramedic to leave work to attend paramedic training sessions when there were four employes remaining on duty.

As the Association argues, arbitrators have held that practices of the parties which are well-established and which are not at variance with the parties' contract language can attain the status of contractual rights and duties. In the present case, however, the undersigned does not find such a practice.

Article 30, Rights of the Employer, provides that:

> "Subject to other provisions of this contract, it is agreed that the rights, function and authority to manage all operations and functions are vested in the employer and include, but are not limited to the following:
>
> D. To relieve employes of duties because of lack of work or for other legitimate reasons.
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> ***
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> H. To exercise discretion in the operation of the City, the budget, organization, assignment of personnel and the technology of work performance.

The undersigned is persuaded that the above language reserves to the City the right to determine whether or not it wishes to permit on-duty paramedics to attend the paramedic training sessions.

The record demonstrates that when a call comes in and there are four employes on duty, the Department calls out all available employes. When there are five employes on duty, there is no automatic call-out, but rather, the decision to call-out additional employes is made at the scene. Additionally, if five employes are on duty and there is a paramedic call, the Department operates with the three remaining employes. However, if there are four employes on duty and there is a paramedic call, the Department calls in an employe to stand by until the ambulance returns.

The undersigned is persuaded that the primary reason for the change in the policy on attendance at paramedic meetings is the desire to avoid overtime situations. The desire to avoid overtime costs is a legitimate business interest of the City.

As the Association argues, the Department operates with four men in sick leave or vacation situations. The preferred staffing level, however, is five men. It is reasonable for the City to maintain the five man staffing whenever the schedule permits.

Based upon the above and foregoing and the record as a whole, the undersigned issues the following

AWARD

1. The grievance is arbitrable.

2. The Employer did not violate a past practice which has become an implied term of contract when it denied on-duty paramedics the right to attend monthly paramedic meetings.

3. The grievance is denied and dismissed.

Dated at Madison, Wisconsin this 10th day of October, 1991.

By Coleen A. Burns /s/
Coleen A. Burns, Arbitrator

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