

BEFORE THE ARBITRATOR

In the Matter of the Arbitration	:	
of a Dispute Between	:	
	:	
MANITOWOC PROFESSIONAL FIREFIGHTERS	:	Case 107
ASSOCIATION, LOCAL 368, PFFW, IAFF,	:	No. 51016
AFL-CIO	:	MA-8464
	:	
and	:	
	:	
CITY OF MANITOWOC	:	
	:	

Appearances:

Shneidman, Myers, Dowling & Blumenfield, Attorneys-at-Law,
P.O. Box 442, Milwaukee, Wisconsin 53201-0442, by Mr.
John B. Kiel, for the Association.
Mr. Patrick L. Willis, City Attorney, City of Manitowoc,
Manitowoc City Hall, 817 Franklin Street, Manitowoc,
Wisconsin 54220, for the City.

EXPEDITED ARBITRATION AWARD

Manitowoc Professional Firefighters Association, Local 368, PFFW, IAFF, AFL-CIO, (the Association) and the City of Manitowoc, (the City) are signatories to a collective bargaining agreement. On June 7, 1993, the Association filed a Complaint with the Wisconsin Employment Relations Commission alleging the City had committed prohibited practices within the meaning of the Municipal Employment Relations Act. On October 12, 1993, in Manitowoc, Wisconsin the parties resolved the matter with the assistance of Jane B. Buffett, a member of the Commission's staff. That voluntary resolution resulted in a stipulated agreement executed by the parties on that day.

On May 13, 1994 the parties jointly requested Ms. Buffett to act as arbitrator to determine the parties' rights under the stipulated agreement. The matter was urgent and the parties agreed to an expedited arbitration proceeding. Pursuant to the expedited proceeding, the parties submitted a stipulation of fact and joint submission of relevant exhibits. The parties agreed to exchange any relevant legal authority prior to the hearing. Hearing was held May 24, 1994 in Manitowoc, Wisconsin at which the parties made oral argument. No additional evidence was presented. Pursuant to the agreed-upon procedure, the arbitrator prepared an expedited award that same day. Since the parties continued to pursue settlement possibilities, they asked that the issuance of the award be held in abeyance. When the settlement discussions terminated without success, the award, pursuant to prior arrangement, was announced by the arbitrator in a telephone conference on May 25, 1994.

Having considered the record and the arguments of the parties, the undersigned issues the following

EXPEDITED ARBITRATION AWARD

The facts in this case are set forth in the parties' stipulation which is attached to this decision as Appendix "A" and incorporated by reference. The October 12, 1993, stipulation which this award interprets is marked Appendix "B" and incorporated by reference.

The dispute centers on the meaning of the word "may" in the sentence, "If the Union agrees there is no impact on any bargaining unit member the light duty may be assigned."

The City argues that this sentence gives it the right to assign light duty if it reaches agreement with the Union regarding any impact on other bargaining unit members, but that it does not obligate the City to assign light duty.

The Union argues the October 12, 1993, stipulation should not be narrowly interpreted because it is ambiguous, and susceptible to an interpretation that the City is required to assign light duty when it is requested.

Words in agreements should be given their common meaning unless they have a special meaning in labor relations, which "may" does not, or unless the context indicates the parties intended something other than the conventional meaning.

The context of the October 12, 1993, stipulation does not indicate that "may" had anything other than its usual meaning of giving discretion and permission, but not creating obligation.

The October 12, 1993, stipulation was reached as the parties resolved a Prohibited Practice Complaint. That Complaint involved an employe who received a light duty assignment without the Union's consent. Those facts are quite different from the instant case in which an employe's request for a light duty assignment has been denied by the City. Nothing in the earlier case indicates that the issue of a denied request was in the contemplation of the parties on October 12, 1993.

Similarly, the parties' conduct during the mediation session does not indicate this issue was considered by the parties on that day. Assuming, without deciding, that the Union's caucus notes showed the Union intended that the stipulation would give employes the right to receive light duty upon request, that interpretation was never shared with the City and therefore is not an understanding that was held mutually by the parties. The undersigned concludes the stipulation does not grant an employe, with Union approval, the right to receive a light duty assignment

upon request. 1/

In light of the record and the foregoing discussion, the undersigned issues the following

AWARD

The October 12, 1993, Stipulation of the parties does not obligate the City to grant Grievant Cynthia Leist's request, supported by the Association, to be assigned light duty.

Dated at Madison, Wisconsin this 26th day of May, 1994.

By Jane B. Buffett /s/

Jane B. Buffett, Arbitrator

1/ This Award does not address the question raised in the Union's argument, but not addressed by the submission of evidence, of whether the City, in denying Ms. Leist's request, did not treat her equally with other employes.