

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

SUPERIOR FIRE FIGHTERS, LOCAL #74, IAFF

and

CITY OF SUPERIOR

Case 167
No. 56595
MA-10342

Case 168
No. 56596
MA-10343

Case 169
No. 56597
MA-10344

Appearances:

Shneidman, Myers, Dowling, Blumenfield, Ehlke, Hawks & Domer, by **Attorney Timothy E. Hawks**, appearing on behalf of the Union.

Ms. Mary Lou Andresen, Human Resources Director, City of Superior, appearing on behalf of the City.

ARBITRATION AWARD

Superior Fire Fighters, Local #74, IAFF, hereinafter referred to as the Union, and the City of Superior, hereinafter referred to as the City, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The Union made a request, with the concurrence of the City, that the Wisconsin Employment Relations Commission designate a member of its staff to act as an arbitrator to hear and decide a grievance over the meaning and application of the terms of the agreement. The undersigned was so designated. Hearing was held in Superior, Wisconsin, on July 21, 1998. The hearing was transcribed and the parties filed post-hearing briefs which were exchanged on September 9, 1998. The parties reserved the right to file reply briefs and each party indicated that it would not file one and the record was closed on October 12, 1998.

BACKGROUND

The City has three engine companies with one at each station. For many years the headquarters station had a tanker and a squad. The tanker basically was a 1,000 gallon tank on a vehicle that was driven to certain areas where additional water was needed. The staffing at the headquarters station consisted of a Captain, a Driver or Motor Pump Operator, a Utility Driver and a Firefighter. The headquarters station also had a four-wheel pick-up truck with a 50 gallon tank and a pump to fight grass fires, which vehicle was called the squad. The Utility Driver was responsible to drive the tanker and squad. Sometime in the recent past, the fire Department purchased a new fire truck which had a 1,000 gallon water tank and in 1997, the tanker was decommissioned and refurbished into a special needs vehicle, mainly Haz-Mat equipment. In the past, the squad was used extensively but in the past few years its use has decreased. The Fire Chief considered eliminating the Utility Driver position because the tanker was gone and the squad was used infrequently.

In negotiations for the successor to the 1994-1996 collective bargaining agreement, the City proposed three swing Motor Pump Operators to fill in for vacancies and vacations. Additionally, the Fire Chief sought two additional positions which would come out of the budget by controlling overtime, staffing levels and vacations. In anticipation of an agreement, on February 12, 1998, the Chief announced these positions and the headquarters staffing would remain the same except that there would be a swing Motor Pump Operator. The agreement was not ratified and on February 25, 1998, the Fire Chief announced the elimination of the Utility Driver position but continued the rank of Utility Driver for the two employees who held that rank until Motor Pump Operator openings occurred. The third Utility Driver was not continued because Captain Dale Trolson retired, Bob Swanson was promoted to Captain and the third Utility Driver position was eliminated and a Fire Fighter position replaced it, which was filled by Steve Panger. Thereafter three grievances were filed. The first asserted a refusal to post the Utility or MPO vacancy; the second was the elimination of the position; and the third was that it was filled by Panger, a junior employe. Panger continued to receive Fire Fighter pay and only was paid at the MPO rate if he operated equipment to temporarily qualify for the higher rate.

ISSUE

The Union stated the issue as follows:

Did the City violate the collective bargaining agreement when it filled the MPO position with Steve Panger; when it failed to post the position; and when it eliminated the position? And if so, what is the appropriate remedy?

The City stated the issue as follows:

Did the City violate the working agreement when it temporarily filled a driver position with Mr. Panger; when it did not post a driver position upon the retirement of Dale Trolson; and when it reallocated a driver position to a firefighter level in February of 1998?

The undersigned frames the issue as follows:

Did the City violate the parties' collective bargaining agreement after Captain Trolson retired when it downgraded a MPO position to a Firefighter position? If so, did the City violate the agreement by not posting the MPO position and by filling it with Steve Panger, a junior employe?

If so, what remedy is appropriate?

PERTINENT CONTRACTUAL PROVISIONS

ARTICLE 2 **SALARY SCHEDULE**

- a) As of the effective date of this Agreement, members of the bargaining unit shall be paid the salaries set forth in Appendix "A".
- b) Whenever a member of the bargaining unit is required to work in a grade higher than his regular position, he shall be compensated therefore (sic) at the rate established at the higher grade.

...

ARTICLE 3 **PROMOTIONS**

- a) *Filling Vacant Positions*: Whenever a vacancy occurs in the bargaining unit, *to fill the position* the City will post the position for a period of fifteen (15) days during which time written applications will be received by the Chief.

. . .

d) Except as provided in b), all positions shall be filled by the applicant with the greatest seniority; provided that, if such position requires specialty training and skills, such position shall be filled on the basis of ability to perform such skills. In the even of equal ability, the most senior applicant will be selected.

. . .

UNION'S POSITION

The Union contends that the City unilaterally changed the wage rate applicable to the Utility Driver position on the third platoon without the Union's consent. The Union points out that the job description for the MPO/Driver provides that the MPO operates motor equipment and apparatus and the distinguishing characteristics include the operation of motorized firefighting vehicles. It submits that the squad is a motorized firefighting vehicle and motor equipment and apparatus and the rescue unit responds to other alarms and operation of these vehicles constitutes MPO's duties, as even firefighters are paid MPO rates when driving them to a scene. The Union rejects the Chief's assertion that usage of these vehicles does not justify a full-time MPO, but it observes that there is a full-time MPO on Platoons 1 and 2, but not 3, a change in a right, privilege and condition of employment, i.e. the wage rate paid to the Utility Driver on Platoon 3. It submits that if the Chief grandfathered the existing Utility Drivers, it proves the Union's point as grandfathering must be bargained. It claims that the unilateral downgrade of a Utility Driver to Firefighter is an evasion of bargaining. It insists that the City was not entitled to downgrade the Utility Driver but had to maintain it as an MPO position. It submits that when a vacancy occurred by Swanson's promotion to Captain, the City had to post and fill the position and not simply assign it to Panger who was junior to others.

CITY'S POSITION

The City contends that under its managements rights, the City has the sole right to determine the methods, means and personnel by which Fire Department operations are to be conducted. The City argues that it properly decided that the Utility Driver position was more appropriately allocated at the Fire Fighter level and while it did not reduce the pay of incumbents, it filled the first vacancy with a Fire Fighter. It notes that filling a Fire Fighter position is not a promotion so no posting is required and as new vacancies occur in MPO positions, those vacancies will be filled by a Firefighter until complete through attrition.

The City asserts that Article 3 a) contains the words “to fill the position” which means the City has the discretion to fill the position and if it does through promotion, the procedures of Article 3 must be followed. The City claims that the Union’s argument that it failed to bargain the impact of its decision is erroneous as noted in the Chief’s answer to the grievances (Ex. 5). It observes that there was no request from the Union to bargain impact after the Chief notified them of his actions on February 25, 1998.

The City maintains that there has been no change in practice in the pay provided by the parties’ agreement and any employe performing MPO duties is paid at the MPO level. The City concludes that it acted properly and no employe was harmed by the change even in the transition to the new structure. It contends that there were no violations of the parties’ agreement.

DISCUSSION

Although there were three grievances filed, they all hinge on whether the City violated the agreement when it determined that the Utility Driver position should be downgraded to a Firefighter position. Article 6 c) I grants the City the right to determine the methods, means and personnel by which Fire Department operations are to be conducted. The Chief has the right to determine the personnel that make up a platoon and duties assigned to these personnel determine their classification based on the job descriptions. The duties presently assigned to the Utility Driver establishes that there are insufficient motor vehicle equipment and apparatus operation to warrant the position be classified as a MPO. The Union has argued that the squad is used as is the rescue vehicle but this is limited to a few months of the year and to a small number of calls such that the provisions of Article 2 b) apply, as it does not require a classification of the higher position when the main duties of the position fall within the lower classification.

The Union has argued that the City is required to maintain a position at the MPO level because it has a MPO on the first and second platoons. None of the grievances object to the grandfathering of the MPO on the first and second platoons. Certainly all could be downgraded because they are not performing at the proper level as the classification system is based on being paid for performing at the MPO level. The City is not seeking that these positions be downgraded and will transfer them to MPO vacancies as they occur. The Union certainly is not asking that they be downgraded and their being “red circled” does not mean a Firefighter doing work within the firefighter classification should be promoted merely because others are “red circled.” There is no provision in the contract that provides for such a result. Contrary to the Union’s contention, the City is not required to maintain the position as a MPO. Because the downgrade was proper, the City did not eliminate the position but merely

classified it according to the duties assigned. Thus, the City was not obligated to post the position nor award it to the senior applicant but properly assigned it to a Firefighter, in this case, to Steve Panger.

Based on the above and foregoing, the record as a whole and the arguments of counsel, the undersigned issues the following

AWARD

The City did not violate the parties' collective bargaining agreement after Captain Trolson retired when it downgraded a MPO position to a Firefighter position. Thus, the City was not required to post any position and filling it with Steve Panger was proper, and therefore, all three grievances are denied.

Dated at Madison, Wisconsin, this 24th day of November, 1998.

Lionel L. Crowley /s/

Lionel L. Crowley, Arbitrator