BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

SUPERIOR LOCAL #74, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS

and

THE CITY OF SUPERIOR

Case 175
No. 58432
MA-10956

Appearances:

Mr. Joe Conway, Jr., President, Madison Firefighters Local 311, International Association of Firefighters, AFL-CIO-CLC, appearing on behalf of the Union.

Fryberger, Buchanan, Smith & Frederick, P.A., by **Attorney Joseph J. Mihalek**, appearing on behalf of the City.

ARBITRATION AWARD

Superior Local #74, International Association of Firefighters, AFL-CIO, (herein the Union) and the City of Superior (herein the City) are parties to a collective bargaining agreement, dated June 15, 1999, covering the period January 1, 1999, to December 31, 2001, and providing for binding arbitration of certain disputes between the parties. On January 13, 2000, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration regarding claims for wage increases and back pay allegedly due to Firefighters Lindzi Campbell, Thomas LeSage, Eric Sutton and Steve Smith (herein the Grievants) as the result of a recent contract settlement and requested the appointment of a member of the WERC staff to arbitrate the issue. The undersigned was designated to hear the dispute and a hearing was conducted on June 5, 2000. The proceedings were not transcribed and the parties filed briefs on July 11, 2000.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

ISSUES

The parties stipulated to the following statement of the issues:

1. Did the Employer fail to calculate the wage rate and back pay adjustment for Firefighters Campbell, LeSage and Sutton in accordance with the terms of the 1997-98 wage agreement?

If so, what is the remedy?

2. Did the Employer fail to calculate the wage rate and back pay adjustment for Firefighter Smith in accordance with the terms of the 1997-98 wage agreement?

If so, what is the remedy?

PERTINENT CONTRACT PROVISIONS

1997-98 CITY OF SUPERIOR AND IAFF LOCAL #74 WAGE SETTLEMENT

Through negotiations with the City of Superior and IAFF Local #74, the contract period of January 1, 1997 through December 31, 1998 is settled through the implementation of a salary structure model for the unit that will consider the average of market comparisons. This implementation is contingent on continuance of this model through a successor agreement for the period 1/1/99 through 12/31/01.

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- The salary schedule for the IAFF Unit Local #74 would be as shown in Appendix A. General wage increases would be calculated on Step 1 of the range for Firefighter, Motor Pump Operator and Fire Captain. The general wage increase would be as follows: 1997 – 3% and 1998 – 3%.

- Current employees, employed prior to the date of ratification of this agreement, would be placed on Step 2 of the salary range effective January 1, 1997 and then move up one step on the salary schedule effective January 1 of each subsequent calendar year.

- Grandfathered Firefighter employee would receive a 3% salary increase 1/1/97 and a 3% salary increase 1/1/98. Upon the next available promotion, if the grandfathered employee does not request consideration for or receive a

promotion, his salary will be frozen at his current rate until the salary for Firefighter is the same as or exceeds this amount at which time he will be placed on that salary step and the grandfathered provision would be removed from the Working Agreement.

- Base rates would be considered as follows:
  Entry Firefighter:
  90% of Step 1 for a period of 12 months
  95% of Step 1 for the next period for 6 months
  After 18 months move to Step 1 of the Firefighter

Current Employees:
Firefighter
1997 general wage increase + 2.0% step increase at Step 2
1998 general wage increase + 1.5% step increase at Step 3

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APPENDIX "A"

The salaries of the members of the bargaining unit according to their respective positions are hereby established for the complete years 1997 and 1998. Annual salaries are based upon 56 hour work week or 2912 hours of work in a year unless otherwise noted.

	3% 01/01/97 Annual/Hourly Salary	3% 01/01/98 Annual/Hourly Salary
	. . .	
Firefighter		
Step 1	$31,129/$10.69	$32,061/$11.01
Step 2	$31,770/$10.91	$32,702/$11.23
Step 3	$32,236/$11.07	$33,197/$11.40
Step 4	$32,556/$11.18	$33,517/$11.51
Step 5	$32,876/$11.29	$33,867/$11.63
Entry Firefighter		
90%	$28,013/$9.62	$28,858/$9.91
95%	$28,567/$9.81	$30,460/$10.46

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Newly Hired Employees – Entry Firefighter:
From date of hire to completion of one (1) full year's service ninety percent (90%) of full rate for the position.

From completion of one (1) full year's service to completion of eighteen (18) months of service ninety-five percent (95%) of the full rate of the position.

After eighteen (18) months of service – Step 1 of the Firefighter rate.

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OTHER RELEVANT PROVISIONS

City of Superior – Settlement – Union Local #74 1996 Wage Reopener

This offer settles all matters arising through a salary reopener provision under the current working agreement to expire on 12/31/96.

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2. Effective January 1, 1996 implement salary increases as follows:
    a. Establish salary range (5% increase) for Firefighter as follows:

Step 1 - $ 9.86 – 0 to 1 year
Step 2 - $10.38 – 1 year or more

Range B – (See 3 below) $10.90

Current employees would move to salary step corresponding to their current step and then progress through this salary range on their anniversary date(s).

Grand fathered Firefighter employee would receive a 3% salary increase. Upon the next available promotion if the grandfathered employee does not request consideration for or receive a promotion, his salary will be frozen at $10.92/hour until the salary for Firefighter is the same as or exceeds this amount at which time he will be placed on the salary step at the top of the range and the grandfathered provision would be removed from the working agreement.

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BACKGROUND

This case involves two separate grievances, both of which concern the proper computation of back pay under the parties' 1997-98 wage settlement, and which were consolidated for the purpose of arbitration. For purposes of clarity, due to the fact that the grievances arise out of different circumstances, they will be treated separately in this award.

Campbell, LeSage and Sutton Grievance

The City and the Union were parties to a collective bargaining agreement which covered the period from January 1, 1994, to December 31, 1996, and which contained a wage reopener provision for 1996 (Jt. Ex. 1) This agreement contained two wage levels for firefighters based upon date of hire. There was one level for those hired prior to January 1, 1987, of which there was one such employee, and a second level for those hired thereafter. In addition, newly hired firefighters would receive 85% of the firefighter base wage for their first full year of employment, 90% for their second year and 95% for their third year. After three years' employment they would receive 100% of the firefighter base wage.

In 1996, the parties engaged in negotiations pursuant to the wage reopener provision and reached a settlement on January 7, 1997. Under the terms of the settlement a new two-step wage structure was implemented, which established a base wage as of January 1, 1996, of $9.86 per hour for firefighters employed for less than one year and $10.38 for firefighters employed for a year or more. (Jt. Ex. 2) The 1994-96 contract expired prior to the parties achieving settlement of a successor agreement.

During the hiatus period between contracts, the City hired the three Grievants as firefighters. Lindzi Campbell was hired on August 26, 1997, Thomas LeSage was hired on January 7, 1998, and Erik Sutton was hired on January 27, 1998. At the time of hire, each of the Grievants was paid the base rate of $9.86 provided in the 1996 reopener agreement and each was raised to the Step 2 rate of $10.38 on their respective anniversary dates.

On June 8, 1999, the parties entered into a wage settlement covering the period from January 1, 1997, through December 31, 1998, as well as a successor agreement to the 1994-96 contract, which covered the period from January 1, 1999, through December 31, 2001. Thereafter, the City computed back pay from January 1, 1997, and issued checks to the bargaining unit employees accordingly. The Grievants objected to the amount of the back pay and claimed, through the Union, that they were entitled to more because under the terms of the 1997-98 settlement, their back pay was to have been calculated starting at Step 2 of the firefighter pay range. The City demurred and argued that the under the settlement the Grievants were considered entry level firefighters, and, therefore, their back pay was properly computed based upon 90% or 95% of the Step 1 wage rate, depending upon their date of hire. A grievance was filed and negotiations took place, but without result, and the grievance proceeded to arbitration.

Smith Grievance

The Grievant, Steve Smith, was hired as a firefighter on March 6, 1980. At some point during his tenure, the City and the Union apparently entered into a two-tiered wage scale for firefighters based upon date of hire. Under this formula, firefighters hired before January 1, 1987, would be paid a wage that was 7.22% higher than firefighters hired thereafter. This formula was utilized through the first two years of the 1994-96 contract, by which point the Grievant was the only remaining firefighter who qualified for the higher rate.

Under the terms of the 1996 reopener agreement, the formula was changed in two material ways. First, the Grievant received a 3% wage increase, whereas all other firefighters received a 5% increase, in effect reducing the wage differential between the Grievant and the other employees to 5.2%. Second, a clause was included to the effect that if the Grievant did not request or receive a promotion, should one become available, his wage rate would be frozen until such time as the other firefighters caught up, at which time he would be slotted at the top of the wage scale. These changes addressed interests the City had in compressing and eventually eliminating the differential in wages by encouraging the Grievant to seek promotion out of his classification.

The 1997-98 wage settlement restructured the firefighters' pay scale and introduced a 5-step structure, while slotting current firefighters at Step 2 as of January 1, 1997, and Step 3 as of January 1, 1998, for advancement and back pay purposes. Under the settlement, firefighters received general increases of 3% in each year and additional step increases for Steps 2 and 3 of 2% in 1997 and 1.5% in 1998. Because the Grievant's wage exceeded the top end of the five-step range, an additional clause was again included for him, indicating that he would receive 3% increases in each year and again reiterating the stipulation that his wages would be frozen should he not request or receive any available promotion.

The 1999-2001 contract retained the 5-step pay structure. It also provided for general wage increases of 3% in 1999, 2.5% in 2000 and 2.5% in 2001, along with 1% step increases to Steps 4 and 5 in 1999 and 2000. Special language was again included specifying that the Grievant would receive general increases of 3%, 2.5% and 2.5% in each year of the contract and that his wage would be frozen should he not request or receive any available promotion. The net effect of the increases, as calculated by the City, was to continue to narrow the gap between the Grievant and the other firefighters until, by 1999, the differential had shrunk to 5.07%. On January 10, 2000, the Grievant was promoted to Fire Captain.

The Grievant filed a grievance on July 30, 1999 alleging that the City violated the terms of the 1996 reopener agreement and the 1997-98 wage settlement in calculating his wage rate and back pay for 1997 and 1998. He asserted that the agreement and past understanding of the parties was that the 5.22% wage differential established in the 1996 reopener agreement was to be maintained and, therefore, he was entitled to the 2% and 1.5% step increases allotted to the other firefighters in 1997 and 1998, as well. The City denied the grievance and the matter proceeded to arbitration.

POSITIONS OF THE PARTIES

The Union

Campbell, LeSage and Sutton Grievances

The language contained in the 1997-98 wage settlement is clear and unambiguous. It states:

> Current employes, employed prior to the date of ratification of this agreement, would be placed on Step 2 of the salary range effective January 1, 1997 and move up one step on the salary schedule effective January 1 of each subsequent calendar year.

The agreement was ratified on June 8, 1999. Under this language, Campbell (d/o/h 8-26-97), LeSage (d/o/h 1-7-98) and Sutton (d/o/h 1/27/98) were all current employees. As such, Campbell was entitled to be placed at the Step 2 wage rate from August 26, 1997, through December 31, 1997, and the Step 3 wage rate on January 1, 1998. LeSage and Sutton were entitled to be placed at the Step 3 wage rate on their respective dates of hire.

The City erroneously placed the Grievants at the 90% rate established for an entry firefighter. This clearly violates the language of the agreement, which placed current employees at Step 2 as of January 1, 1997, and made the date of ratification the defining point for what constitutes a current employee. It is irrelevant, therefore, that the Grievants were not employees as of January 1, 1997.

Local #74 President, Steve Panger, testified that the intent of the Union was to put all current firefighters, except Steve Smith, at the same level and progress them through the steps together. The Grievants do derive a benefit in that they are moved up to the level of more senior firefighters, but this reflects an attempt to draw a bright line in order to resolve wage issues simply and treat employees consistently, which is not unusual in cases where contract negotiations have taken a long time. Panger's testimony makes it clear that the language in the 1997-98 wage settlement can only have been meant to include the Grievants in the definition of current employees.

If the City had considered the Grievants to be entry firefighters, as it claims, then it should have placed them at the 90% rate as of their dates of hire, moved them to the 95% level after 12 months and placed them at Step 1 after 18 months. It did not do this. Campbell was placed at the 90% rate as of August 26, 1997, moved to the 95% rate on January 1, 1998, and to the Step 1 level on January 1, 1999. LeSage was placed at the 90% rate on January 7, 1998, and moved to the 95% rate on January 1, 1999. Sutton was placed at the 90% rate on January 27, 1998, and moved to the 95% rate on January 1, 1999. Clearly, the City acted arbitrarily in placing the Grievants on the schedule and did not follow the formula set forth in

the contract, even assuming the Grievants were entry firefighters. The flaw in the City's logic can be shown by the fact that Campbell's original wage at time of hire was $9.86, yet the City calculated her wage rate under the 1997-98 settlement as $9.62 for back pay purposes, a reduction of $0.24.

The City argued that the parties reached a settlement of sorts, whereby the Grievants would be placed at Step 1 of the pay scale, but testimony of Union President Panger revealed that settlement required approval of the membership, which did not occur. Further, the City's proposal does not agree with the contract language. Therefore, the grievance should be sustained and the Union's interpretation of the contract should be adopted.

Smith Grievance

The City incorrectly argues that the language of the 1997-98 wage settlement was intended to result in an eventual erosion of the difference between the Grievant's wage rate and the top step for firefighter under the contract. The language concerning the Grievant was inserted to encourage him to seek promotion. Thus, it was only to have effect in the event he failed to seek or receive an available promotion. Where no promotion is available, the language has no application and should be ignored.

To the contrary, there is an established past practice of maintaining a wage differential between the Grievant and the other firefighters. Between January 1, 1991, and January 1, 1996, there was a difference of 7.22% between the Grievant's wage and that of the other firefighters. This was reduced to 5.2% in the 1996 reopener agreement only because otherwise the Grievant's wage would have been within the Motor Pump Operator category, which the parties sought to avoid. This was a one-time exception, however, and has no precedential effect.

Under the 1997-98 agreement, the only circumstance under which the Grievant's wage separation was to have eroded was in the event he did not accept an available advancement opportunity. This did not occur. The contract does not provide for reduction of the wage differential under any other circumstances and to do so was a clear violation of past practice. The grievance should be sustained.

The City

Campbell, LeSage and Sutton Grievance

Under the 1997-98 wage agreement, firefighters with less than 18 months experience were considered entry employees and qualified for a lower wage rate. It is not disputed that the agreement, although signed in June 1999, was to have retroactive effect to January 1,

1997. All three Grievants were hired after January 1, 1997, and so could not be placed at Step 2 as of that date, notwithstanding the language of the agreement. Clearly, the Grievants were entry firefighters under the 1997-98 agreement, as well as under the 1996 reopener agreement, which classified any firefighter with less than three years experience an entry level employee. The 1996 agreement was still in effect when the Grievants were hired.

Campbell was hired on August 26, 1997. Under the 1997-98 agreement, her beginning wage was 90% of Step 1 and she would not reach Step 2 until February 26, 2000. Nevertheless, the Union argues that she should have been placed at Step 2 as of her date of hire. Likewise, LeSage and Sutton were hired on January 7, 1998, and January 27, 1998, respectively. They should have been placed at the 90% rate as well and would not reach Step 2 until January 1, 2001, yet the Union claims that under the 1997-98 agreement they should have been paid at the Step 3 rate retroactive to their dates of hire.

The Union's position, if sustained, would lead to an absurd and unjust result. It would require the Arbitrator to ignore 1) the clear language of the contract regarding entry level employees; 2) the fact that only employees as of January 1, 1997 could qualify for the Step 2 rate on that date; 3) the parties intent that more experienced firefighters should be paid more than less experienced firefighters; and 4) the fact that the 1997-98 agreement, though signed in 1999, was retroactively effective. It would also credit the Grievants for service time they have not earned and award them Step 2 or Step 3 wages as of their dates of hire.

The Union misconstrues the language of the 1997-98 agreement to mean that all employees as of the date of ratification should be paid at Step 2 as of January 1, 1997, and Step 3 as of January 1, 1998, and that this includes the Grievants. In fact, the language was intended to deal with the transition of employees who were at Step 2 under the 1996 reopener to the new five-step scale instituted in 1997, by placing them at Step 2 on the new scale, which required the equivalent of 30 months service. There is no language in the agreement providing for new hires to be placed at Step 2 or 3, nor that the language concerning entry firefighters was to be ignored.

It is obvious that to receive the Step 2 rate as of January 1, 1997, one must be an employee as of that date. The Union argues, however, that the Arbitrator should ignore the fact that the effective date of the agreement was January 1, 1997. Under its interpretation, an employee hired in 1997 would start at Step 2, an employee hired in 1998 would start at Step 3 and an employee hired on June 7, 1999, the day prior to ratification, would start at Step 4. An employee hired on June on June 16, 1999, however, would only start at 90% of Step 1. This would be an unreasonable result and inconsistent with the parties' intention of giving higher compensation to more experienced firefighters.

On July 15, 1999, the Union requested that the City exempt the Grievants from the entry firefighter clause, as shown on Employer Exhibit 3, but the City rejected this request. The City did enter into a negotiated settlement, however, placing the Grievants at Step 1 as of

their dates of hire, based on the Union representatives' assurance that they had authority to agree, and paid the Grievants accordingly. Subsequently, the Union failed to ratify the agreement and claimed its representatives did not have authority to enter the agreement. Thus, the Grievants were, in reality, overpaid. The Arbitrator should, therefore, enforce the contract according to its terms and require the Grievants to reimburse the City for the money they have been overpaid.

Smith Grievance

It is a general tenet of contract construction that, where multiple contract clauses bear on the same subject, general language is usually restricted by specific language unless a contrary intention is clearly manifested. In this case, the parties' agreement provides that all current employees are to be placed at Step 2 as of January 1, 1997. Since the Grievant's wage was greater than the Step 2 rate, however, a specific clause was added addressing his wages. The "Smith" clause provided that the Grievant would receive general increases in 1997 and 1998. Only in the event that his wage rate was frozen would he be placed on the step schedule and then only when the other firefighters had achieved his rate.

The other firefighters received the same general increases as the Grievant, but they received an additional 2% step increase in 1997, which was the differential between Step 2 under the 1996 reopener and Step 2 under the 1997-98 agreement. The Grievant does not seek to be paid at the Step 2 rate, because that is less than his regular rate, but he does seek the same step increase to maintain the same rate differential. This is contrary to the parties' intention in negotiating the agreement, which was to gradually eliminate the differential between the Grievant and the other firefighters.

The Union's argument is also undermined by the doctrine of "expressio unius, est exclusio alterius," which holds that the particular inclusion of one thing, excludes other items not mentioned. The "Smith" clause expressly states that he will receive 3% increases in 1997 and 1998. It does not mention step increases or refer to the increases of other firefighters. Because the clause is specifically applicable to the Grievant, therefore, he does not qualify for the additional increases paid to the other firefighters.

The specific language of the contract defeats the Grievant's claim. Had the parties intended for the Grievant to receive step increases, appropriate language would have been included in the "Smith" clause, but it was not. The clause is specific in stating that he will only receive general increases. This reflects the intent of the parties to eventually compress the wage differential until all firefighters were on the same scale. This was eventually achieved in January, 2000, at which point the Grievant accepted a promotion to Fire Captain. The grievance should, therefore, be denied.

DISCUSSION

Campbell, LeSage and Sutton Grievance

This case centers on an evaluation of two arguably applicable clauses in the parties' 1997-98 wage agreement (Jt. Ex. 3). The first stipulates that all current employees, defined as those employed prior to ratification of the agreement, shall be placed at Step 2 of a newly adopted 5 step wage scale as of January 1, 1997, and Step 3 as of January 1, 1998. The second specifies that entry level firefighters shall be paid 90% of the Step 1 wage rate for their first full year of employment, 95% for the next six months and the full Step 1 rate thereafter. The juxtaposition of these provisions arises because the three Grievants herein were all hired after January 1, 1997, but prior to ratification of the agreement on June 8, 1999. Thus, the Union views the Grievants as current employees and the City views them as entry firefighters, as those terms are used within the agreement.

Standing alone, each of these provisions is clear and unambiguous, but when applied together to the present situation confusion is created as to which controls. It is important, therefore, to determine the underlying intent of the parties in drafting both provisions, if possible, in order to arrive at the proper result. To do so, it is necessary to view each provision within the context of the entire agreement and it is also necessary to be aware of the bargaining history and external circumstances surrounding the development of the agreement.

In the first place, according to the terms of the 1996 reopener agreement, under which the Grievants were hired, there was not a category of "entry firefighter," which received a fractional wage, as had previously been the case. The Grievants were all hired at the full Step 1 rate under the reopener and were advanced to the Step 2 rate on their respective anniversary dates. At this point, therefore, they were at the same wage rate as the other firefighters, save the one covered by the grandfather clause.

The position of "entry firefighter" and the concept of fractional wages were reintroduced in the 1997-98 wage agreement, along with the adoption of a 5-step wage scale and, because the Grievants all fell within the definition of an entry firefighter their back pay was computed at entry firefighter rates (U. Ex. 7). Anomalously, under this analysis the Grievant Campbell's back pay rate as of her date of hire was $9.62, although her original wage rate was $9.86, which would have resulted in her having to reimburse the City $0.24 an hour for the period from August 26, 1987 to January 1, 1998. In fact, this is the remedy that the City now seeks. In my view, however, under the 1997-98 agreement the Grievants are properly categorized as current employees, rather than entry firefighters and, therefore, are entitled to the corresponding wage rate.

The agreement unequivocally defines "current employees" as including all employees ". . . employed prior to the date of ratification of this agreement. . .," which clearly includes the Grievants. Had the parties intended the clause to have the effect advanced by the City,

they could have defined current employees as being those employed prior to the effective date of the agreement. Had they done so, there would have been no question that the Grievants were entry firefighters, because they had all been employees for less than 18 months during the term of the agreement. Alternatively, they could have included language specifically excluding the Grievants from the definition of current employees because they were hired during the term of the agreement. They did neither, and their silence had the effect of encompassing the Grievants within the category of current employees.

While the City forcefully argues that this was the effect of the language regarding entry firefighters, I am not persuaded this is so. There was no position of entry firefighter at the time the Grievants were hired, because that classification was eliminated in the 1996 reopener. At the time the 1997-98 agreement was ratified, they were at the Step 2 rate under the reopener, along with the other firefighters. To hold that the entry firefighter language in the 1997-98 agreement applied to the Grievants, therefore, would have the effect of moving them backward, for they would not advance at the same rate as the other firefighters who were at Step 2 at the time of ratification. Union President Panger testified that the parties intended that all current firefighters be placed at the same level and advanced accordingly and this testimony was credible.

The City points out, however, that under the language of the agreement current employees were to be placed at the Step 2 level as of January 1, 1997, for back pay and advancement purposes and that this is an impossibility as regards the Grievants since they were not employees on that date. While this is true, the key is that the provision applied to all employees as of June 8, 1999, regardless of date of hire, with the intent of establishing them at the Step 2 rate between January 1 and December 31, 1997, and the Step 3 rate as of January 1, 1998. This does, as the City points out, result in the Grievants effectively having a hiring rate at Step 2 or Step 3, which is much higher than the rate applicable to any firefighters hired after the date of ratification, but that is the logical result of standardizing wage rates and establishing baselines, as the parties did here, and it is within their capacity to do so in a collective bargaining agreement. I find, therefore, that the Grievants are current employees under the 1997-98 wage agreement and that the provision regarding entry firefighters was intended only to have prospective application. As a result, the Grievant Campbell was entitled to be placed at Step 2 as of August 26, 1997, and the Step 3 rate as of January 1, 1998, for back pay and advancement purposes. The Grievants LeSage and Sutton were entitled to be placed at the Step 3 rate as of January 7, 1998, and January 27, 1998, respectively, for back pay and advancement purposes.

Smith Grievance

The Grievant, Steven Smith, by virtue of being, for some time, the only firefighter in the Superior Fire Department hired prior to January 1987, was established at wage rate 7.22% above that of the other firefighters in the department. The testimony and documentary

evidence indicate, however, that the City desired to eliminate this disparity and also to encourage the Grievant to seek a promotion out of the firefighter classification. In consequence thereof, the parties incorporated a special clause into 1996 reopener agreement specifically addressing the Grievant, the intent of which was to eventually eliminate the Grievant's special category. The provision required to the Grievant to seek any available promotion and accept any that was offered, otherwise his wage rate would be frozen until the wage rate the other firefighters caught up. Similar language was incorporated into the 1997-98 wage agreement.

A second aspect of the 1996 agreement provided the Grievant with a 3% wage increase, whereas the other firefighters received a 5% increase. All parties agree this was to prevent the Grievant's wage rate from moving into the range of a Motor Pump Operator. It also had the effect of reducing the wage differential between the Grievant and the other firefighters to 5.2%. This erosion continued under the City's implementation of the 1997-98 agreement, because it provided 3% general increases to all firefighters, but also provided step increases to the other firefighters, which were not given to the Grievant.

The Union does not dispute that the purpose of the "grandfather" clause was to induce the Grievant to seek promotion and thereby eliminate his special classification. Neither does it dispute the intent or effect of the wage freeze language if he did not do so. The dispute centers on the fact that the Grievant did not receive commensurate step increases in 1997 and 1998 to maintain the 5.2% differential. The Union argues that the parties have maintained this wage structure for an extended period and that, absent specific language to the contrary, the 1997-98 agreement should be interpreted in such a way as to perpetuate it. I do not agree.

The language of the 1997-98 agreement places all current employees at Step 2 of the newly adopted wage scale as of January 1, 1997, with a 2% step increase along with a 3% general increase. On January 1, 1998, they would be advanced to Step 3, with a corresponding 1.5% step increase and a 3% general increase. This language applied to all firefighters generally. The separate provision, which applied specifically to the Grievant, provided him the 3% general increases each year, but made no mention of step increases or the maintenance of a wage differential.

It is a generally accepted principle of contract interpretation that specific provisions in an agreement constitute exceptions to general provisions which have contrary effect. Thus, where specific and general provisions bear on the same issue, the specific should take precedence CITY OF HOUSTON, 86, LA 1068, 1072 (STEPHENS, 1986). Here, the general language provides all employees with step increases and general increases, but the clause specifically dealing with the Grievant only mentions general increases, leading to the inference that he was not intended to receive step increases with the other employees.

Further, it is true, as the Union argues, that the parties had an apparent practice of maintaining a static percentage gap between the Grievant's wage rate and that of the other

firefighters, but it appears from the evidence that the parties had elected to depart from that practice. This is evident from the reduction of the percentage in the 1996 agreement from 7.22% to 5.2% 1/ The fact that the 1997-98 agreement only provides for general increases supports this conclusion. The Union argues that the parties' intent was to retain the differential, but this is not reflected in the language of the agreement. Further, it is inconsistent with the uncontroverted fact that the reason the differential was reduced was to avoid having the Grievant's wage rise into the Motor Pump Operator range. As with the prior grievance, had the parties chosen to do so, they could have incorporated specific language either providing the Grievant with step increases or memorializing their understanding regarding the wage differential, but they did not, leading to the conclusion that the continuing goal was to keep the Grievant's wage rate below that of a Motor Pump Operator.

1/ The Union points out that the reduction in 1996 was intended to prevent the Grievant's wage rate from rising to the level of a Motor Pump Operator. It is worthy of note that under the 1997- 98 agreement the Step 1 rate for a Motor Pump Operator in 1997 was $11.45 per hour. If the Grievant received the step increases he prays for here, his 1997 rate would be $11.47 per hour.

Another point which must not be overlooked is that the step increases provided to the other firefighters were a consequence of the adoption of the 5 step wage range in the 1997-98 agreement. Thus, the other employees were placed on the grid at Step 2 as of January 1, 1997, and advanced one step annually until they reached Step 5 on January 1, 2000, at which point they, too, would receive only general increases thereafter. Specifically, the provision places all "current employees" at Step 2 and provides for annual advancement, thereby tying the step increases to the initial Step 2 placement. The Grievant was off the grid, however, and was excluded from this provision by specific language.

Finally, the Union argues that the City, in effect, implemented the "wage freeze" language of the grandfather clause improperly because the condition precedent, that the Grievant have been offered and refused a promotion, had not occurred. This is not strictly true, however, because the Grievant's wage rate was not frozen. While he did not receive the same step increases as the other firefighters, he continued to receive general increases, whereas under a wage freeze he would have received no increases at all.

As with the other grievance, this situation reflects the tension created by a determination to standardize wage rates and establish baselines, but this time from the other end of the scale. The determination to establish a uniform wage grid had a compressing effect from both ends of the scale, artificially advancing junior members of the bargaining unit, while slowing the advance of the most senior, in the hopes of thereby improving the lot of the group as a whole. Thus, the inference that the Grievant was not intended to receive step increase

under the 1997-98 agreement is consistent with the scheme underlying the wage restructure. I find, therefore, that the City did not violate the 1997-98 agreement or past practice in denying the Grievant step increases thereunder.

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

AWARD

The City failed to calculate the wage rate and back pay adjustment for Firefighters Campbell, LeSage and Sutton in accordance with the terms of the 1997-98 wage agreement. The City shall, therefore, make the Grievants whole as follows. The Grievant Campbell's wage rate shall be established at the Step 2 rate under the 1997-98 agreement as of August 26, 1997, and at the Step 3 rate as of January 1, 1998, and her back pay shall be adjusted accordingly. The Grievant LeSage's wage rate shall be established at the Step 3 rate under the 1997-98 agreement as of January 7, 1998, and his back pay shall be adjusted accordingly. The Grievant Sutton's wage rate shall be established at the Step 3 rate under the 1997-98 agreement as of January 27, 1998, and his back pay shall be adjusted accordingly.

The City did not incorrectly calculate the wage rate and back pay adjustment for the Grievant Smith in accordance with the terms of the 1997-98 wage agreement and his grievance is, accordingly dismissed.

Dated at Eau Claire, Wisconsin, this 19th day of October, 2000.

John R. Emery /s/
John R. Emery, Arbitrator

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