

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**WAUSAU FIREFIGHTERS ASSOCIATION, INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS, LOCAL 415**

and

CITY OF WAUSAU

Case 96
No. 60314
MA-11577

(Mortensen Promotion Grievance)

Appearances:

Mr. Jon R. Schnell, State Labor Representative, International Association of Fire Fighters, 377 Echo Hill Drive, Green Bay, Wisconsin, appearing on behalf of Local 415, Wausau Firefighters Association.

Ruder, Ware & Michler, S.C. by **Attorney Dean R. Dietrich**, 500 Third Street, P.O. Box 8050, Wausau, Wisconsin, appearing on behalf of the City of Wausau.

ARBITRATION AWARD

Wausau Firefighters Association, Local 415, hereinafter "Union," requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and the City of Wausau, hereinafter "City," in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. Lauri A. Millot, of the Commission's staff, was designated to arbitrate the dispute. The hearing was held before the undersigned on January 23, 2002, in Wausau, Wisconsin. The hearing was not transcribed. The parties submitted post-hearing briefs, the last of which was received on March 8, 2002. Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

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 agreed at hearing that there were no procedural issues in dispute and stipulated that the issue to be determined was:

Whether the City violated the Labor Agreement when it selected two other employees for promotion to the position of Lieutenant instead of the Grievant? If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

Article 4 - MANAGEMENT RIGHTS

The City possesses the sole right to operate City government and all management rights repose in it, but such rights must be exercised consistently with the other provisions of this contract. These rights include, but are not limited to, the following:

...

B. To hire, promote, transfer, assign and retain employees in position with the City.

...

G. To introduce new or improved methods or facilities.

H. To change existing methods or facilities.

...

J. To determine the methods, means and personnel by which such operations are to be conducted.

...

Article 11 - PROMOTION PROCEDURE

A. Notice of Vacancies: The Chief shall see that available openings for regular or new positions are made known to employees in the Department. Notice of such openings or new positions shall be posted in each station in the Fire Department for a minimum of ten (10) calendar days, and this shall be considered full compliance with this provision.

B. Promotional Criteria: In cases of promotion, other than appointment to positions outside the bargaining unit and for Motor Pump Operators, the Chief in making recommendation to the Police and Fire Commission shall base his recommendation on the following factors: job knowledge, job performance, and seniority. These factors shall be given equal weight in recommending an employee for a promotion, unless the Chief determines that the factors should be weighted, in which case, all applicants shall be considered on the same standards and the weights to be given to each criteria shall be included in the job posting. In no event, shall the weight given to seniority be less than ten percent (10%). Job performance shall be determined by the individual's past department performance evaluation giving due consideration to each grader's grading habits. The Chief shall make his recommendation for promotion from among the employees who receive the top three highest composite scores. Promotions to the position of Motor Pump Operator shall be based solely on seniority.

...

BACKGROUND AND FACTS

The facts giving rise to this grievance are not in dispute.

On or about March 11, 1999, City Fire Chief Gary L. Buchberger issued a memorandum to all fire department personnel putting them on notice of a vacancy in the position of Fire Lieutenant as a result of the retirement of Larry Karlmann. The memorandum informed those interested in the promotional opportunity of the application procedure which was to submit a "Letter of Intent, Personal Resume, and a completed "JOB-RELATED QUALIFICATIONS QUESTIONNAIRE FOR FIRE LIEUTENANT (capitals in original)." It further informed the membership that:

...

Eligibility for this promotion will be based upon job knowledge (50%), job performance (40%), and seniority (10%). A competitive examination will be held to determine the first level of job knowledge. The test date for the competitive examination will be Tuesday morning, April 13th, 1999. The exact time will be posted at a later date. The top five candidates, based on the above criteria, will be invited to an oral job knowledge interview conducted by three senior fire officers from the area. All promotions require final approval by the Wausau Police and Fire Commission. The top three finalists resulting from the

oral interview will be submitted to the Wausau Police and Fire Commission for final selection. A separate oral interview conducted by the Wausau Police and Fire Commission may be scheduled to accommodate their wishes.

...

Attached to the above memorandum was the position description for the Fire Lieutenant-Operations position, a reading list, and a procedure that included

...

3. Job knowledge will be broken down into a written exam to determine the first level of knowledge and an oral interview score. (See attached reading list).

...

In response to the promotional posting, the Grievant, Gordon Mortensen, submitted a complete application package for the Fire Lieutenant position by March 22, 1999. Subsequently, he and the other candidates completed the written test. Buchberger issued a memorandum on April 15, 1999, informing all applicants that five candidates would be invited to a department interview scheduled for April 20, 1999. The five successful candidates were listed "in order of seniority" in the memorandum as follows: Rick Schultz, Doug Flory, Tom Gipp, Gordon Mortensen and Steve Bahr.

Following the department interviews, Buchberger issued a memorandum on April 21, 1999, to the finalists for the vacant Lieutenant position indicating that the testing and evaluation process was complete and that the candidates' final scores had been calculated based on seniority (10%), performance evaluations (40%) and job knowledge (50%). The candidates, listed in order of their final scores, were Doug Flory, Gordon Mortensen, Rick Schultz, Tom Gipp and Steve Bahr.

The Police and Fire Commission interviewed Flory, the Grievant and Schultz on April 27, 1999, Chief Buchberger recommended Schultz and Schultz was awarded the Lieutenant-Operations position.

No grievance was filed regarding the promotion of Schultz.

On January 15, 2000, Buchberger issued memorandum in response to the retirement of Tom Gould thus creating a Fire Lieutenant vacancy. The memorandum informed the membership that a Fire Lieutenant position was available specifically stating "the retirement of Tom Gould has created a Fire Lieutenant opening within the department." The memorandum

replicated the criteria and process portion of the memorandum issued March 11, 1999, but was different with regard to the application process in that it stated:

. . .

Those fire department members who applied for the Fire Lieutenant vacancy in March, 1999 are still eligible for consideration if they are still interested in this opportunity. The promotion will come from that eligibility list. Eligible personnel applying for this promotion will be required to submit a Letter of Intent. Your Personal Resume, and completed "JOB-RELATED QUALIFICATIONS QUESTIONNAIRE FOR FIRE LIEUTENANT" will be used from your last application. It is your responsibility to ensure management still has all current and pertinent information.

. . .

The four remaining eligible candidates, the Grievant, Flory, Gipp and Bahr, submitted timely letters of intent to comply with the promotional application procedures.

As a result of personnel movement in the management structure in the Fire Department, a second Lieutenant position became vacant when a Lieutenant was promoted to Captain position. The City did not post a notice for this vacancy.

Tom Gipp withdrew his name from consideration before Chief Buchberger made his recommendation to the Police and Fire Commission.

On May 23, 2000, the Police and Fire Commission met. Chief Buchberger recommended to the Police and Fire Commission candidate Flory for the position vacated by Gould and candidate Bahr for the position open as a result of the promotion of a Lieutenant to a Captain position. The Police and Fire Commission did not conduct interviews with any of the candidates. The Police and Fire Commission approved the promotion of Flory and Bahr to the two (2) vacant Lieutenant positions.

As a result of the Grievant not being promoted, he filed this grievance on June 15, 2000, which was activated on or about January 19, 2001. 1/ The grievance alleged a violation of Article 11, Section B of the labor agreement. The grievance was described as "Failure of the Chief, as a representative of management for the City of Wausau, to follow terms of the contract under the above cited Article/Sections. Specifically with regard to the promotions announced in memo dated May 24, 2000 and the procedures used in establishing these promotions." The relief sought was "Promotion by the City to the rank of Lieutenant-Operations. Or promotion to an equivalent rank as established, and mutually agreed upon, by the City, Union and myself. In either Case, pay and benefits to be at the rate of Lieutenant-Operations and retroactive to May 24, 2000."

1/ The Grievant filed two separate grievances on June 15, 2000. The one giving rise to this arbitration was held in abeyance while the Grievant pursued a second one concerning the failure of the Chief to give a reply to the Grievant as to why he was passed over for promotion. The second grievance was withdrawn without prejudice. The grievance held in abeyance was reactivated on or about January 19, 2001.

The City denied the grievance at all steps.

In a letter dated June 2, 2000, Fire Chief Buchberger explained the specific reason the Grievant was not selected for promotion which read in pertinent part:

. . .

Based on your composite numerical scores in seniority, job knowledge and job performance you ranked number two (2) of the top four (4) candidates for consideration for two (2) openings in the position of lieutenant.

By contract I am required to recommend two of the top four candidates for promotion. I based that recommendation on my evaluation not only of the numerical score but also on an evaluation of the entire person concept and the experience, knowledge and overall fitness that person brings to the position.

I recommended Steve Bahr because I believe he has greater depth and breath of knowledge and experience in those areas of management and leadership skills essential for this position than you have demonstrated. Although you have more years of experience in this department and a higher composite score, Steve has held and demonstrated positive leadership ability in the positions of supervisor, administrative officer, and even fire chief in other departments in the fire service. Steve has over twenty years of experience accumulated in the fire service and has demonstrated leadership ability and skills superior to yours.

Technical competence is important and is looked at as necessary for promotion, but it is not the only deciding factor I look for. The position of lieutenant also requires an ability to supervise, to garner consensus and to manage personnel and work assignments in a harmonious manner. In my final assessment I believe Steve Bahr brings a greater amount of this ability to the job and was therefore recommended over you for promotion.

The Police and Fire commission [sic] have the option but not the requirement to interview candidates if they so choose. In this case the Police and Fire commission [sic] accepted and approved my recommendations without interviews.

. . .

POSITIONS OF THE PARTIES

Union Initial Brief

The Union argues that the City has violated the terms of the labor agreement as it relates to promotion procedures. The Union relies upon the plain meaning of the contract, the past practice of the parties and the expectations of fair and equal treatment of all employees.

The Union points out that the labor agreement clearly obligates the City to inform all employees of available openings through a department wide posting procedure. The Union asserts that the City failed to post the second Lieutenant position and as such, violated Article 11 of the labor agreement.

The Union next addresses the criteria that the City is contractually bound to utilize when making promotional decisions. The Union argues that the City may only consider job knowledge, job performance and seniority as stated in Article 11. The Union takes the position that the job knowledge component, as defined by the City in its March 11, 1999 memorandum, is assessed by the written test and oral interview with senior officers. The job performance component is from the candidates' past department performance evaluations and seniority is the candidate's actual continuous length of service since the most recent date of hire. The Union argues that Chief Buchberger's utilization of Candidate Bahr's "demonstrated leadership in the positions of supervisor, administrative officer and even fire chief in other departments of fire service" is not consistent with the parties' contractual definition of "job performance" and further, that Chief Buchberger was not in a position to evaluate Bahr's past performance in this area because he was not employed with the City at that time. The Union notes that the Grievant has served as Acting Lieutenant on numerous occasions over the last eight years, whereas Bahr has not served as an Acting Lieutenant with the City.

The Union argues that the City has deviated from its past practice of requiring candidates to complete an oral interview with the Police and Fire Commission. The Union asserts that the City created two different standards; one for Flory and the Grievant who were interviewed by the Commission and another for Gipp and Bahr who were not interviewed by the Commission. The Union concludes that the different standards followed by the City result in unfair and unequal treatment of all employees.

City Initial Brief

The City argues that arbitral precedent afford the City with all rights not expressly prohibited or limited by the labor agreement. The City cites *GLENDALÉ PROFESSIONAL POLICEMEN'S ASSOCIATION V. CITY OF GLENDALÉ*, 83 WIS.2D 90, 98, N.W.23d 594, 599 (1978) in support of the proposition that the City Police and Fire Commission has complete discretion as it relates to the appointment of fire personnel to subordinate positions unless

relinquished by a labor agreement. The City argues that the labor agreement requires the Chief to establish an eligibility list based on three factors: job knowledge, job performance and seniority. The agreement further requires that based on these factors, the names of the candidates with the three highest scores will be given to the Commission and that the Chief makes his recommendation from among those three candidates. The City argues that these are the only restrictions placed on the promotional process and compares its decision to those of the employers in ST. CROIX COUNTY, CASE 166, NO. 56943, MA-10470 (MAWHINNEY, 6/99); CITY OF EAU CLAIRE (FIRE DEPARTMENT), CASE 243, NO. 58898, MA-11100 (JONES, 5/99), and OZAUKEE COUNTY, CASE 50, NO. 59340, MA-11256 (MCLAUGHLIN, 5/01).

The City next argues that Chief Buchberger's reliance on the information contained in the "Job-Related Qualifications Questionnaire" does not violate the labor agreement. The City argues that although an ambiguity exists as to whether the Chief may rely on the content of the "Job-Related Qualifications Questionnaire," by construing the agreement and other relevant documents as a whole, the ambiguity is resolved in favor of the City. The City argues that the only explicit limitation on the Chief's authority to recommend a candidate is that the candidate must be one of the three with the highest score, thus if the Chief is considering the information in the "Job-Related Qualifications Questionnaire" of one of the three highest candidates, his action is appropriate. The City further notes that the labor agreement contains no other explicit restriction on the Chief's authority to issue his personal recommendation.

Finally, the City asserts that it has a past practice of the Chief relying on the "Job-Related Qualifications Questionnaire" since Chief Buchberger relied on this document when he recommended Schultz in 1999. The City asserts that it followed the "exact same procedure" in 2000 as it did when Schultz was promoted in 1999. The City concludes that since the 1999 promotion did not violate the labor agreement, the promotions of Flory and Bahr in 2000 do not violate the agreement.

Union Reply Brief

In response to the City's assertion that the same hiring procedure was used in the promotion of Flory and Bahr, the Union refers the Arbitrator to the testimony of Chief Buchberger wherein he testified that Bahr had never been interviewed by the Police and Fire Commission. The Union reaffirms its position that fair and equal treatment does not exist when a different standard is applied.

With regard to the impact of the different standard, the Union asserts the Grievant met the expectations of the Police and Fire Commission during his interview while an assessment of how Bahr would have done in an interview with the Commission is pure speculation. Since the Police and Fire Commission did not conduct an interview, it is not in a position to evaluate Bahr's ability to manage human resources nor to assess his composure during a stressful situation like an employment interview.

For all of the above reasons, the Union argues that the Grievant is entitled to the promotion to Lieutenant.

City Reply Brief

The City asserts that the Union has misstated the issue to the extent that the Union has attempted to introduce a fairness standard, and further, that such a standard is not applicable to the instant dispute.

In response to the Union's argument that the City violated the labor agreement by failing to post the second Lieutenant position, the City argues rather than post the second Lieutenant vacancy, the City chose to "simply incorporate it into the selection process for the first vacancy." The City relies on Arbitrator Mawhinney's decision in ST. CROIX COUNTY, CASE 166, NO. 56943, MA-10470 (MAWHINNEY, 6/99) when she found that although the employer was responsible for two procedural errors in its promotion process, the errors did not adversely impact the grievant so as to warrant ordering the employer to promote the grievant.

The City argues that Chief Buchberger held all candidates to the same standard. The City points out that it is not a contractual requirement that the Police and Fire Commission conduct oral interviews. It further asserts that all candidates were held to the same standard - the Chief considered the "Job-Related Qualifications Questionnaire" when Schultz was hired and he did so again when Bahr was hired.

The City denies unilaterally changing the promotional criteria of the labor agreement when it promoted Bahr.

Finally, the City denies that it considered Bahr's previous experience as part of the "Job Performance" criteria of the labor agreement. Rather, the City argues that the Chief appropriately considered the content of the "Job-Related Qualifications Questionnaire" when he made his personal recommendation.

For all of the above reasons, the City asserts that the grievance be denied.

DISCUSSION

The issue to be determined is whether the City's decision to promote Tom Flory and Steve Bahr, rather than the Grievant, to two vacant Lieutenant positions in the Fire Department violated the labor agreement. The thrust of the Union's argument focuses on the promotion of Steve Bahr in lieu of the Grievant. The only evidence introduced regarding the promotion of Flory to the position vacated by Lieutenant Gould related to the application and interview

process of 1999. The parties have not argued the merits of Flory's promotion. Since the issue to which the parties stipulated requires that I address the promotion of Flory, I will do so based on the contractual language and limited amount of evidence presented.

Failure to Post Vacancy

The contractual clause that addresses promotion in detail is Article 11. Article 11, Section A, contractually obligates the City to post available openings for regular and new positions for a minimum of ten (10) days. The City posted the Lieutenant position vacated by Gould by January 15, 2001, but did not post a second Lieutenant position created by the promotion of an incumbent Lieutenant to a Captain position. Although the City explains its actions by stating that it choose to "simply incorporate it into the selection process for the first vacancy," it neither has the latitude nor authority to deviate from the express terms of the parties agreement. I therefore find that the City violated Article 11, Section A, when it did not post the second Lieutenant vacancy.

Tom Flory was awarded the Lieutenant position vacated by Tom Gould. This position was posted on January 15, 2000. There is no argument that the posting was not in compliance with Article 11, Section A. Since the position was posted consistent with Article 11, I do not find a contractual violation as it relates to the City's obligation to post the Lieutenant position awarded to Flory.

The Criteria for Selection

Section B, of Article 11 provides that promotions will be based on "job knowledge, job performance and seniority" and that the Chief has the contractual right to determine the weight of these factors in calculating candidate composite scores. Once the composite scores have been established, the three highest scores and their accompanying candidate names are provided to the Chief. The Chief then has the right to choose any of the three, regardless of their ranking. If, as the Union argues the Chief may only consider job knowledge, job performance and seniority in the percentage and manner defined in the memorandum of March 11, 1999, and reiterated in the memorandum of January 15, 2000, then the Chief has no discretion and would be bound to choose the candidate with the highest composite score. This would render meaningless the portion of Article 11, Section B, that provides the Chief the right to choose any of the three candidates with the highest composite score. Thus, in order to give meaning and effect to all clauses of the agreement, I conclude that the Chief is contractually obligated to base his recommendation on the legitimate job criteria of knowledge, performance and seniority and further that he may recommend any of the three candidates with the highest composite score, regardless of their ranked order.

There is no evidence or allegation by the Union that the City, in establishing the composite scores, deviated from its contractual obligation. Thus, unless the Union can show that Buchberger decision's was arbitrary, capricious or discriminatory, there is no violation of the labor agreement. See Elkouri and Elkouri, How Arbitration Works, 5th Edition, p. 844 (1997).

The record substantiates that Buchberger chose Bahr because "he has greater depth and breadth of knowledge and experience in those areas of management and leadership skills essential for this position than you have demonstrated." Buchberger's testimony at hearing replicated this rationale. Moreover, Buchberger testified that he considered the Grievant's leadership skills and was aware of the Grievant's work in the nursing field and his experience and training/teaching responsibilities within the department and for the technical college. The Union argues that the City acted inappropriately when it considered Bahr's prior management and leadership experience with other fire service providers. The Union's argument relies on its categorization of management and leadership as components of the "job performance" criteria and argues that job performance is limited to evaluations while in the employment of the City Fire Department. Although I agree with the Union that it would be inappropriate to consider Bahr's prior service not in the employ of the City as part of the job performance component of the criteria, the Union's argument is misplaced. First, the facts do not establish that the City considered Bahr's prior management and leadership experience as a component of "job performance." Second, the labor agreement provides the Chief the latitude to chose any of the three highest composite score candidates. The only contractual limitation placed on the Chief is that he must consider of job knowledge, job performance and seniority. Since past management and leadership experience can be reasonably ascertained from the job knowledge component and since the Chief desired to consider these two factors, he has the right to do so. And third, past management and leadership experience is information that was contained in Bahr's application materials and gleaned from the written and oral assessment of Bahr. The Chief's decision to choose Bahr was contractually grounded. Moreover, his consideration of Bahr's past management and leadership experience was within his discretion and reasonable when considering a candidate for a leadership position. Thus, I find that the City did not act in an arbitrary, capricious or discriminatory manner when it promoted Bahr rather than the Grievant.

With regard to Buchberger's decision to recommend Flory instead of the Grievant, as previously stated, the Chief has the contractual authority to choose among the three candidates with the highest composite score when making his recommendation. Flory was one of the three candidates with the highest composite score. No evidence was offered one way or another about the merits of Buchberger's recommendation of Flory. The Union bears the burden of proof, and I find there is no proof to support a claim that Flory was promoted inappropriately. Given my previous conclusion that there was no procedural violation in the posting of this vacancy, the grievance, insofar as it relates to the Flory promotion, is denied in its entirety.

The Failure of the PFC to Interview Candidates

Finally, the Union asserts that since the successful candidate, Bahr, was not interviewed by the Police and Fire Commission, the Grievant was subject to disparate, unfair and unequal treatment. Although the Police and Fire Commission interviewed candidates Schultz, Flory and the Grievant in 1999, it chose not to conduct any interviews in 2000. Article 11 does not require the Police and Fire Commission to conduct interviews. Management has the right to “decide on the methods to use to determine ability so long as they are fair and nondiscriminatory and the factors considered are directly related to the job's requirements and the applicant's ability to meet those requirements.” Elkouri and Elkouri, *SUPRA*, pp. 845-846. “Implicit . . . is the requirement that any such Employer action shall not be made in a manner that can be characterized as arbitrary, capricious, discriminatory and/or clearly wrong so as to protect the earned seniority rights of any affected employee(s).” *DAKOTA ELECTRIC ASSOCIATION*, 84 LA 114, 118 (BOYER, JR., 1/85). The record does not establish that the decision by the Police and Fire Commission to forego interviews was either biased in favor of Bahr nor was it biased against the Grievant. The record is devoid of reasons for the Police and Fire Commission’s decision not to interview candidates. Lacking any evidence to substantiate that the City’s decision to forego interviews was arbitrary, capricious or unlawfully discriminatory, I find that the City’s decision to change its promotion procedure in 2000 was consistent with its contractual rights.

The Union alleges that the change in procedure is unfair. I would agree with the Union that the process would be unfair if some candidates were interviewed and others were not for the same vacancy, but these are not the facts with which I am presented. The Grievant was interviewed for a prior vacancy, but there is no evidence that the Grievant’s prior interview was weighed in making the Bahr promotion. It may be, as the Union asserts, that that Bahr would have done poorly during his interview with the Police and Fire Commission, thus making the Grievant a more desirable candidate, but this is supposition and even if it were true, it does not matter because the Police and Fire Commission have the right to change their process.

With regard to Flory, the Union appears to argue that he was subjected to disparate treatment. There was no disparate treatment between Flory and the Grievant because they were both interviewed in 1999. As discussed above, the promotions in 2000 followed a different interview procedure than the promotion in 1999. The City was within its contractual rights to alter the process. Given that the City was acting within its rights and that Flory participated in the 1999 interview, I find that the promotion of Flory, rather than the Grievant, was consistent with Article 11.

Conclusion and Merits

The record establishes that the Grievant had served in an Acting Lieutenant capacity on a number of occasions pre-dating the 2000 promotional process. The Grievant conducts

HAZMAT training and education for the Department and at the technical college. At the time of hearing, the Grievant was an Acting Motor Pump Operator and an Acting Lieutenant. It appears from the record that the Grievant meets the requirements for a lieutenant's job, but that is not the issue here. The Chief judged him qualified, but exercised his discretion to choose another of the three top candidates. There is no showing of animosity against the Grievant. Given that the labor agreement does not require that the Police and Fire Commission interview candidates and that the Police and Fire Commission accepted the recommendation of Chief Buchberger who considered the qualifications of the Grievant, I find that the evidence does not demonstrate that the City acted improperly in that regard.

Remedy

I have found that the City violated the labor agreement when it failed to post the Lieutenant vacancy created by the promotion of a Lieutenant to a Captain position. I have not found that the criteria utilized by Chief Buchberger when making his recommendation to the Police and Fire Commission or the failure of the Police and Fire Commission to conduct interviews with the three candidates with the highest composite score constitute contractual violations. Thus, in fashioning a remedy, it is essential that the remedy appropriately addresses the labor agreement violation. The issue before me is whether the contract was violated when Bahr and Flory were selected for promotion over the Grievant. The substance of those decisions was contractually appropriate. The violation was in the failure to post and the Grievant was not prejudiced by the lack of a posting. He was treated as a candidate for the openings. Additional competitors could not have improved his chances. It may be that some other member of the Department has a complaint about the failure to post, but I am confined to the dispute and the disputants before me in this specific case. For this reason, I conclude that the appropriate remedy for the violation found here is a declaration of rights, advising the parties that the City does not have the right to bypass the clear and unambiguous posting requirement of the contract.

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

AWARD

1. No, the City did not violate the Labor Agreement when it promoted Doug Flory to the Lieutenant position previously held by Tom Gould.
2. Yes, the City violated the Labor Agreement when it failed to post the Lieutenant position awarded to Steve Bahr.

3. The appropriate remedy is to post all future vacancies in accordance with the clear terms of the agreement.

Dated at Wausau, Wisconsin, this 21st day of June, 2002.

Lauri A. Millot /s/

Lauri A. Millot