

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**LOCAL UNION NO. 1777, INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS (IAFF), ALF-CIO-CLC**

and

VILLAGE OF GREENDALE

Case 71
No. 60821
MA-11734

(Paid On-Call Grievance)

Appearances:

Mr. Joseph Conway, 5th District Vice President, International Association of Fire Fighters, 821 Williamson Street, Madison, WI 53703, OPEIU, appearing on behalf of IAFF Local 1777.

Davis & Kuelthau, S.C., by **Attorney Nancy L. Pirkey**, 111 East Kilbourn Avenue, Suite 1400, Milwaukee, WI 53202, appearing on behalf of the Village of Greendale.

ARBITRATION AWARD

Pursuant to the provisions of the collective bargaining agreement between the parties, IAFF Local 1777 (hereinafter referred to as the Union) and the Village of Greendale (hereinafter referred to as either the Village or the Employer) requested that the Wisconsin Employment Relations Commission designate a member of its staff to serve as arbitrator of a dispute over the Village's use of paid on-call firefighters. The undersigned was so designated. A hearing was held on June 24, 2002, at the Village Hall in Greendale, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute. The parties submitted post-hearing briefs, which were exchanged through the undersigned on August 28, 2002, whereupon the record was closed. Now, having considered the evidence, the arguments of the parties, the relevant contract language, and the record as a whole, the undersigned makes the following Arbitration 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 stipulated that the issues before the Arbitrator are:

1. Will the Village of Greendale violate Article 7, 9, 29, 32 and/or 33 of the collective bargaining agreement if it implements revised Special Order 01-2, Department Training Sessions, in which the following language is deleted:

“Ride-a-longs will not affect the minimum of (4) full-time personnel on duty”

and replaced with:

“Paid On-call Firefighters will be assigned to a position and work detail by the OIC for the time they are in the station. The number of call back personnel will be adjusted during this period of time.”?

2. If so, what is the appropriate remedy?

CONTRACT LANGUAGE

ARTICLE III - MANAGEMENT RIGHTS

3.01 The Union recognizes the prerogatives of the Village to operate and manage its affairs in all respects in accordance with its responsibility, and the powers or authority which the Village has not specifically abridged, delegated or modified by other provisions of this Agreement are retained exclusively by the Village. Such powers and authority in general include; but are not limited to, the following:

- (1) To determine its general business practices and policies and to utilize personnel, methods and means in the most appropriate, efficient and flexible manner possible.
- (2) To manage and direct the employees of the Fire Department, to make assignments of jobs, to determine the size and composition of the work force, and to determine the competence and qualifications of the employees.

- (3) To determine the methods, means and personnel by which the operations of the Fire Department are to be conducted.
- (4) To take whatever action may be necessary in situations of emergency.
- (5) To hire, promote and transfer employees, and to make promotions to supervisory positions in the manner most advantageous to the Fire Department.
- (6) To discipline, suspend, demote and discharge employees for just cause.
- (7) To schedule overtime work when required in the manner most advantageous to the Fire Department.
- (8) To subcontract or contract out work when deemed necessary.

3.02 The parties agree that each employee shall perform all the duties of his/her classification and it is understood by the parties that every incidental duty connected with operations enumerated in any job description is not always specifically described. Nevertheless, it is intended that all such duties shall be performed by the employees.

. . .

ARTICLE VI- RULES AND REGULATIONS

6.01 The Union agrees that its members shall comply with all Fire Department rules and regulations including those relating to conduct and work performance. The Village agrees that actions taken under departmental rules and regulations affecting terms and conditions of employment shall be subject to Article XIII, Grievance Procedure.

6.02 Rules and Regulations in effect on December 1, 1972 which affect terms and conditions of employment shall be considered as part of this Agreement. The Village may revise existing or adopt new rules and regulations relating to the conduct and performance of its business and of its employees, but the reasonableness of any such revised or new rule or regulation affecting terms and conditions of employment shall be subject to Article XIII, Grievance Procedure. In the event a grievance is filed, such rule or regulation shall be stayed pending determination under the Grievance Procedure. In case of conflict between any rule or regulation and the terms of this Agreement, the latter shall prevail.

ARTICLE VII - EXISTING RIGHTS AND PRIVILEGES

7.01 In the event the Village revises employee rights and privileges which existed as of December 1, 1972 and which have not been modified by mutual consent, the reasonableness of any such revision shall be subject to Article XIII, Grievance Procedure. In the event a grievance is filed, such revisions shall be stayed pending determination under the Grievance Procedure.

...

ARTICLE IX - OVERTIME PAY, CALL-BACK, TRAINING

9.01 In the event an employee is required to work outside of the employee's regular duty hours to maintain whatever minimum standards of manpower that are determined by the Fire Chief, the employee shall be paid at one and one-half (1-1/2) times his basic rate of pay for all such hours worked. The base rate of pay shall be the employee's annual salary divided by 2,912 hours. Whenever applicable, such overtime shall be distributed on a seniority list basis in rotation.

9.02 In the event an employee is called back to work or is required to work outside of the employee's regular duty hours for any reason other than stated in Section 9.01 above, the employee shall be paid at one and one-half (1-1/2) times his/her basic rate of pay for all such hours worked, with a minimum of one (1) hour's pay at time and one-half (1-1/2). After the first hour, an employee will be paid a full hour's pay for any period of an hour worked.

9.03 Employees attending training sessions outside of their regular duty hours, if such attendance at the school, class or training session has been authorized by the Fire Chief, will be paid at one and one half (1-1/2) times their basic rate of pay for all such hours of attendance, with a minimum of one (1) hour's pay at time and one-half (1-1/2). After the first hour, an employee will be paid a full hour's pay for any period of an hour worked.

...

ARTICLE XIII - GRIEVANCE PROCEDURE

13.01 The grievance procedure provided for in this Article shall apply to grievances involving the interpretation or application of this Agreement. Time limits set forth herein shall be exclusive of Saturdays, Sundays and holidays.

...

13.05 Upon completion of this review and hearing, the Arbitrator shall render a written decision as soon as possible to both the Village and the Union which shall be final and binding upon both parties. In making his/her determination, the Arbitrator shall neither add to, detract from nor modify the language of this Agreement.

...

ARTICLE XXIX - SAFETY AND HEALTH

29.01 The Village and the Union agree to cooperate to the fullest extent in the promotion of safety and health. To this end, all members of the bargaining unit agree to abide by Safety Rules of the Greendale Fire Department and to actively participate in a Greendale Fire Department physical fitness program, mutually agreed upon by the Village of Greendale, Local 1777, I.A.F.F. and the Fire Chief.

...

ARTICLE XXXII - CONDITIONS OF AGREEMENT

32.01 Neither party to this Agreement waives any rights possessed by it under state or federal laws, regulations or statutes. It is intended by the provisions of this Agreement that there be no abrogation or limits of the duties, obligations or responsibilities of the Village which are now provided for by the State Statutes. In the event of conflict between the provisions of this Agreement and such State Statutes, the latter shall in all cases be applicable and shall prevail.

32.02 This Agreement constitutes the entire agreement between the parties and no verbal statement shall supersede any of its provisions.

32.03 The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make requests and proposals with respect to any subject matter not removed by law from the area of collective bargaining and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. The Village and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time that they negotiated or signed this Agreement.

...

ARTICLE XXXIII - AMENDMENTS AND SAVINGS CLAUSE

33.01 This Agreement may not be amended except by the mutual consent of the parties in writing.

33.02 If any provisions of this Agreement shall be held invalid, the validity of the remaining portions of this Agreement shall not be affected and the parties shall meet to re-negotiate such invalid provisions.

BACKGROUND

The Village provides general municipal services to the citizens of Greendale, southwest of Milwaukee. Among the services provided is fire suppression and emergency rescue, through a Village Fire Department. The Department employs a Chief, three captains, three lieutenants and twelve full-time firefighters. In addition to its full-time personnel, the Department employs up to sixteen paid on-call firefighters. The full-time firefighters and the lieutenants are represented by the Union, and work a set 1-1-1-1-4 schedule, averaging 56 hours per week. The on-call firefighters work only as needed, though they are required to attend training on a regular basis, and to be available to ride-along on-calls. While the Department has employed on-call firefighters for many years, they are not included in the bargaining unit. All of the Department's full-time firefighters and officers started their careers as paid on-call firefighters.

The normal staffing for a shift in the Department is four full-time firefighters, a lieutenant and a captain. The Department sets minimum staffing for the station at three firefighters and one officer. If staffing falls below the minimum due to illness or other absence, a full-time firefighter is called back to duty to bring the levels back up to the minimum. When a call comes in, the Department calls back off-duty personnel to maintain minimum staffing levels while the scheduled personnel respond to the call. The practice has been to alternate between full-time firefighters and paid on-call firefighters for these call backs.

Until 2001, the Department would generally respond to a rescue call with three full-time firefighters and one paid on-call firefighter, if a paid on-call firefighter was available. Only paid on-call firefighters who have received a Firefighter I and EMT certification are allowed to ride-along on-calls. Such ride-alongs are a means of gaining experience and familiarity with Department procedures and personnel. The number of personnel responding to a call might be lower or higher, depending upon the nature of the call. If a second call came in before the crew returned, it would be staffed with whomever had responded to the call-back, which might mean one full-time firefighter and two or three paid on-call firefighters or, in rare cases, a crew completely made up of paid, on-call firefighters.

Gary Fedder took over as Fire Chief in 1999. At the beginning of 2001, Chief Fedder adjusted the training schedules for paid on-call firefighters and, as part of the change, established a requirement that each paid on-call firefighter would have to be available to work at least one four hour shift each month to ride-along with full-time personnel. He met with the Union before formally announcing the change. The Union expressed concerns that the scheduled four hour shifts for paid on-call personnel might affect the call-back system and staffing levels for full-time personnel. In response to these concerns, Fedder included a sentence in Special Order 01-2 stating that the ride-alongs by paid on-call personnel would not affect the minimum number of on-duty full-time personnel:

1/02/2001

. . .

In order to improve the quality of our weekly training sessions the following changes are now in effect:

- Training will last up to 3 hours (depending upon topic)
- Training will be held 3 times per month

During non-scheduled training weeks the time can be used as follows:

- Make-up of missed training sessions
- Special job assignments
- As OIC sees fit

The Paid on Call will continue to train on Wednesdays for 2 hours from 1900-2100hrs. They will train 3 times monthly on the scheduled training weeks.

In addition to their weekly training, every POC firefighter will be required to complete a 4-hour ride-a-long session at the station each month. Ride-a-longs can be any 4-hour block between 0800-2200hrs Sunday thru Saturday. You will be paid your training wage for this time. Sign-up for ride-a-longs will be done by the end of the previous month. If for some reason you must change your scheduled time it must be cleared and rescheduled with the OIC.

Ride-a-longs will not affect the minimum of (4) full-time personnel on duty.

. . .

Union President Joseph Cassini responded the next day with a letter stating his understanding of the scope and impact of the new Special Order.

Jan 3, 2001

Chief Gary Fedder,

This letter is being written in regards to the Greendale Paid On Call Fire Fighters portion of Special Order 01-2. We the Greendale Professional Fire Fighters Local 1777 understand the new order for the P.O.C.s to be a ride-along program. The four hours the P.O.C.s are required to ride-along will be credited towards their monthly/yearly training requirements. We further understand this program will enable the P.O.C. members to gain more hands-on training and patient contact in preparation for anticipated state mandates on EMT care requirements. We understand that current call-back practices will not change. In our discussion with you after Captain Saidler read this Special Order to us, you stated that you would like to re-evaluate this Special Order regarding the P.O.C.s at the beginning of the next calendar year 2002. At that time, we feel our involvement would be beneficial to the re-evaluation of Special Order 01-2. Thank you for your time and consideration of our request.

...

Fedder did not respond to the Union's letter. In mid-June, he revised the Special Order, removing the sentence about maintaining the four full-time minimum staffing level, and replaced it with a sentence stating that the Officer In Charge would assign paid on-call firefighters to a position and a work detail when they were assigned to the station:

...

Paid On Call Firefighters will be assigned a position and work detail by the OIC for the time they are in the station. The number of call back personnel will be adjusted during this period of time.

...

The effect of this change was to allow the paid on-call firefighter to count towards the staffing of a run as the third member of the crew, and thereby reduce the number of call backs needed to maintain minimum staffing.

Two days after the revised Special Order was issued, the Union requested bargaining over the change. Two days after that, the instant grievance was filed. It was not resolved in the lower steps of the grievance procedure and was referred to arbitration. Prior to the hearing, the Union made a bargaining proposal to the Village as part of the on-going negotiations over a new contract. The proposal would have amended the Management Rights clause. This proposal was not agreed to and was ultimately withdrawn by the Union.

At the arbitration hearing on June 24, 2002, in addition to the facts recited above, the following testimony was taken:

Joseph Cassini, Former President of Local 1777

Joseph Cassini testified that he started as a paid on-call firefighter with the Village in 1985, and was hired as a full-time firefighter in 1988. From 1983 through January of 2002, he was the President of Local 1777. Cassini spoke with Chief Fedder when Special Order 01-2 was issued, and his understanding was that full-time staffing would not be affected by the Order and that the only effect would be to allow paid on-call personnel to ride-along on rigs for training. The June revision was issued without prior consultation with the Union and Cassini interpreted it as allowing paid on-call personnel to count towards the minimum staffing on a crew. According to Cassini, this had never been done before, and would reduce the number of call-back and overtime opportunities for full-time personnel.

On cross-examination, Cassini stated that he had never received any additional training when he went from being a paid on-call firefighter to a full-time firefighter. His training as a firefighter came while he was on-call, during once a week training sessions. He also earned an Associates Degree in firefighting and EMT certification on his own while he was on-call. As an on-call firefighter, Cassini responded to rescue calls as the fourth man on a crew with three full-time firefighters.

Reviewing the collective bargaining agreement, Cassini agreed that there was no guarantee of overtime in the call back provisions, and that the existing practices language used December of 1972 as the benchmark for preserving existing practices. Cassini stated that he was not employed with the Department in 1972 and did not know what the staffing levels were at that time. Cassini noted that Article 29 of the contract requires the parties to cooperate to the fullest extent on safety issues, and that there had been no cooperation by the Village in changing the staffing levels. He expressed concern about the safety of increased reliance on on-call personnel because they were not as experienced or as committed as full-time firefighters.

Cassini agreed that on-call personnel became more experienced as they responded to more calls, the same as full-time firefighters, and that he was not aware of any citizen complaints about the level of service provided by on-call firefighters. He conceded that, under the former call-back system, it was possible when two calls came in to have the first crew consist of three full-time and one on-call firefighter, and the second crew consist of one full-time and two on-call firefighters. He stated that this was preferable to having two full-time employees on each crew, since it was not certain that a second call would be received. He stated that the Union had never, to his knowledge, grieved the practice of having more than one on-call firefighter on a crew responding to a second call.

Tim Gorzalski, Firefighter, Madison Fire Department

Tim Gorzalski testified that he was a paid on-call firefighter with Greendale for four months before being hired by Madison as a full-time firefighter and EMT. He had his Firefighter I and EMT certification when he worked for Greendale, and was allowed to go out on-calls. However, when he joined the Madison Department, he was required to participate in a 13-week training academy before he was allowed to respond to any calls. They gave no weight to his training as an on-call firefighter.

On cross-examination, Gorzalski said that Madison had no paid on-call firefighters. He agreed that, during his time with Greendale, he had been on rescue calls with crews having paid on-call firefighters, though he could not recall how often this had occurred. This was when a second call came in. He had never gone as the third man on a first rescue call, but said he had seen full-time firefighters let paid on-call personnel take their place on first calls. This was on Wednesday nights, when all of the paid on-call staff were present at the station for training. He agreed that this probably affected call back opportunities for full-time firefighters on Wednesday nights.

James Hintz, President of Local 1777

James Hintz testified that he started as an on-call firefighter in Greendale in 1996 and was hired as a full-time firefighter in 1998. Hintz reviewed the job description for paid on-call firefighters, and noted that their duty was to assist the full-time firefighters. While on-call firefighters were sometimes allowed to ride-along on-calls in place of a full-time firefighter before the Special Order, this was a spontaneous and informal decision by the Officer In Charge, not a systematic program. Hintz stated that on-call personnel had never regularly been assigned in place of full-time personnel before the June 2001 Special Order, and expressed the opinion that this violated the protections for existing rights and privileges in the collective bargaining agreement. He opined that the Special Order placed no restrictions on what an on-call firefighter might be assigned to do, and removed the guarantee of a four person minimum complement of full-time personnel.

Hintz reviewed the normal staffing for various events, per the revised Special Order issued by former Chief Arnold Heling in 1999. The order showed the safe ridership of pieces of equipment and the normal staffing of equipment in a given situation. In response to a personal injury accident, four fire fighters would be dispatched, two on the rescue squad and two on a fire engine. For a car or grass fire, or a fuel spill, four firefighters would respond on an engine. All available personnel would respond to a confirmed fire alarm.

On cross-examination, Hintz agreed that there was no written guarantee that three full-time employees would respond to a rescue call, and said that it was a matter of past practice. Likewise the minimum staffing level of four full-time officers was a matter of practice rather

than negotiated language. He said that he was aware that firefighters sometimes allowed on-call personnel to take their place on rescue calls. He agreed that there was no substantive difference between an Officer In Charge deciding to send an on-call firefighter as the third man on a rescue call and the effect of the Special Order.

Hintz stated that he received no additional training when he went from being an on-call firefighter to being a full-time firefighter. He agreed that the on-call firefighters aim at becoming full-time firefighters, and engage in training and certification programs to that end. He said that on-call firefighters received relatively little patient contact because their opportunities were limited. The Chief explained to him that increasing patient contact levels for on-call personnel was one purpose of the Special Order, and that revised EMT standards required additional patient contact for maintaining the certification. Hintz agreed that, prior to the Special Order, the three person crew for a second call might consist of two or even three on-call firefighters.

Hintz reviewed the contract and stated that the rights and privileges protected by Article IX were those in existence in December of 1972. He said he knew that the Department had paid on-call firefighters in 1972, but was not aware of the standard for staffing at that time. Hintz said he put forth a proposal in bargaining in 2002 to revise the Management Rights clause as a means of resolving this grievance, but withdrew it when it became clear that the City would not agree. He made the proposal on the advice of the IAFF Regional Vice President. The proposal was, in his view, not a substantive change but merely means of clarifying the contract to avoid having to go to arbitration.

Gary Fedder, Fire Chief

Gary Fedder testified that he started with the Department as a paid on-call firefighter in 1974, and went to full-time in 1977. Between 1977 and 1994 he was a member of the bargaining unit and served as Secretary, Treasurer and an Executive Board member of Local 1777. He became Chief in 1999.

Fedder testified that paid on-call firefighters were necessary because of the small size of the Department. On-call personnel are given pagers, and are required to advise the dispatcher of their schedules, so that they can be called when available to cover for call-outs. The Special Order that is the subject of this grievance was intended to expose the on-call personnel to the full-time personnel and to the Department's procedures. Before issuing the initial version of the Special Order, he met with the Union and in order to assuage their concerns, he added a sentence about the Order not affecting minimum staffing levels.

Fedder testified that he revised the Order to allow the Officer In Charge to assign the on-call firefighter to duties because he wanted to have the on-call personnel assigned as the third person on rescue calls. In part this was because officers reported that the full-time

personnel were all responding to first calls, leaving no full-time firefighters to respond if a second call came in. He also wanted to minimize the need for call backs, in part because he was advised that the Department was getting a weak response to call backs from the off duty full-time firefighters. Before issuing the Order, he questioned the Department's officers about the performance of the on-call staff, and was told they were all performing well. This satisfied him that they were qualified to respond as the third person on the rescue calls. Fedder said that the Special Order was not intended to reduce the minimum staffing levels of full-time personnel, and that he had not meant to suggest that by removing the sentence in the former version of the Order. He had thought the Union understood that staffing levels would be unaffected.

Fedder stated that he reviewed statistics on rescue call responses for the years 1994, and 1999-2002. His review of the data indicated to him that the use of on-call personnel as the third person on a call, and even as two of the three responders, was 53 times in 1994, 7 times in 1999, 32 times in 2000, 38 times in 2001, and 17 times in the first five months of 2002. This included responses to second calls. These statistics do not reflect any impact of the revised Special Order, since it has been held in abeyance pending the outcome of the grievance.

Fedder testified that when he started with the Department in the mid-1970's, the staffing on an ambulance run was often two firefighters, until new equipment was purchased in late 1977, when the normal response was increased to three firefighters. He said that there were no guaranteed staffing levels for rescue calls and that it was common to adjust the number of responders based on the nature of the call and the number of available personnel. Fedder stated that there had never been a grievance over ambulance runs staffed by less than three full-time firefighters.

On cross-examination, Fedder agreed that the minimum staffing level for the station had always been four, though he reiterated that staffing for a call was in the discretion of the Officer In Charge. He conceded that the statistics he cited for 1994 and 1999-2002 may have all been staffing on second calls. Fedder agreed that the National Fire Protection Association recommended staffing an ambulance with two persons and an engine with four, but noted that most emergency medical services calls did not really require an engine and thus he felt that a two person response to a medical call was generally adequate.

Fedder estimated that an on-call firefighter probably went on 15 calls per year, while a full-time firefighter responded to 300. These numbers varied according to the individual's willingness to respond to call-backs. He agreed that he would have more confidence in a crew composed of three full-time firefighters than a crew of three on-call firefighters.

Fedder reiterated that the ride-along policy has no impact on minimum staffing levels for the station, or on the call-back policy itself, but conceded that it would the need to call back full-time firefighters. He said that, given the weak response to call backs by full-time firefighters, it was not possible to be sure how much actual impact it would have on overtime.

Trustee James F. Strange, Former Fire Chief

James Strange testified that he is a Village Trustee of Greendale, and was a member of the Fire Department for 34 years until he retired in 1999. From 1994 to 1999 he served as Fire Chief. He was on the Department in December of 1972, the date set by the contract to preserve existing rights and privileges, and he recalled that in 1972 it was common practice to send two persons out on rescue calls. The number increased to three when the Department secured new equipment in the late 1970's. Strange testified that even after the new equipment was obtained, it was not uncommon to have a two man response to a rescue call, though three was the norm. The number of firefighters sent depended upon the seriousness of the call in the judgment of the Officer In Charge.

Strange recalled that it was often the case that firefighters would have on-call firefighters go on runs in their place, and that the Officer In Charge would always agree. When he was the Officer In Charge, it was often the Union President who suggested letting the on-call personnel take the place of a full-time firefighter.

Strange testified that the minimum staffing level for the station was four firefighters and the minimum for rescue calls was two. When a first call came in, the dispatcher would alternately call full-time firefighters and on-call firefighters until the station was back to the minimum. It did not matter whether all of the persons responding to the call back were on-call or full-time, or some combination of the two.

Strange stated that on-call firefighters and full-time firefighters have the same training requirements and job expectations, though he conceded that the on-call firefighters had a lower status in the station and that there were tensions between the two groups. He said that those tensions had existed for many years, and that he would not expect them to interfere with anyone's performance at a rescue or fire scene. He agreed that the degree of teamwork on a call would be different with an on-call firefighter, since they did not regularly work with the crew, but expressed confidence in the Training Officer and Fire Chief to insure that all of the personnel on a call were competent to do their jobs.

Strange said that the ride-along program had been successful to date, even without the implementation of the revised Special Order. He agreed that when he was the Chief, no on-call firefighter had ever appeared on the daily assignment sheet with specific duties, but also noted that the assignments were adjusted constantly during the day to fit the needs of the situation with the available personnel.

Additional facts, as necessary, will be set forth below.

ARGUMENTS OF THE PARTIES

The Position of the Union

The Union takes the position that the revised Special Order is a Trojan horse, styled as an effort to improve training, but actually intended to modify the call-back procedure in the contract and reduce overtime opportunities for full-time firefighters. This is a mandatory topic of bargaining, and not something that is subject to unilateral change. If the City wishes to change the call-back procedures, it must bargain that change. In connection with this, the Union denies that it waived bargaining over changes in the Special Order. Certainly the Local Union attempted to resolve this grievance at the bargaining table, and certainly it dropped its proposal once it became clear that the Village was unwilling to move. All parties knew this to be an effort resolving the grievance, not as some free-standing proposal to change the contract. The contract already protects the seniority, job security and overtime rights of the full-time firefighters. The failure of The Union's settlement efforts cannot be viewed as a forfeiture of the right to seek redress in arbitration.

The Village's claim that there is some sort of past practice authorizing its actions is without support in the record. Testimony relating a few isolated anecdotes about firefighters trading places on the rig with paid on-call firefighters tells the arbitrator nothing about the mutual intent of the parties to this contract. No one can seriously argue that two individuals can effectively amend the collective bargaining agreement, and that is what the Village's evidence amounts to. Moreover, former Chief Strange testified to at most two or three incidents each year in which these switches took place. That is a tiny percentage of the calls. His most significant testimony was there had never before been a practice of assigning a position and a work detail to paid on-call firefighters. Contrary to the Village's position, Chief Strange's testimony supports the Union's claim that the Special Order is a change in practice.

The use of paid on-call personnel creates obvious concerns for the safety of the full-time firefighters, as well as for the compensation of those firefighters and the integrity of their bargaining unit. These matters are addressed in the collective bargaining agreement, and the Village cannot simply ignore the Association when taking actions to diminish the current levels enjoyed by the Association's membership. The Union points to the contract's promise that the parties "agree to cooperate to the fullest extent in the promotion of safety and health." Replacing a professional firefighter on a four man crew with an inexperienced on-call firefighter is completely contrary to this agreement. Indeed, the job description for the paid on-call firefighter makes it plain that the Village views on-call personnel as qualified only to "assist" the full-time personnel and to provide "backup for manning purposes." By moving them into the front-line of service, the Village is making inappropriate and unsafe use of on-call personnel, to the detriment of both the on-call and full-time firefighters. The Union notes the testimony of Madison Firefighter Gorzalski that when he left Greendale and moved to the Madison Department, he was required to undergo twelve additional weeks of training before being allowed to respond to rescue calls. This highlights the tremendous inadequacy of the Village's current training program. That inadequate training program plainly raises safety concerns, and increasing the Department's reliance on paid on-call personnel can only worsen the safety problem.

Finally, the Union rejects the Village's claim that its actions are authorized by the Management Rights clause of the contract. That provision grants the Village broad authority, but only insofar as that authority is not "specifically abridged, delegated or modified by other provisions" of the contract. The right to schedule overtime and assign workers are abridged by two specific provisions. Section 9.01 of the contract specifically protects the full-time firefighters' rights to overtime: "Whenever applicable, such overtime shall be distributed on a seniority list basis in rotation." There is no dispute that call-back overtime has been subject to this provision. Moreover, former Fire Chief Strange testified that during his tenure, no one but full-time firefighters had been assigned to positions and duties on a daily basis. Article VII protects "existing rights and privileges which existed as of December 1, 1972" and this overlaps Strange's career. The attempt to move work to on-call firefighters clearly removes the rights and privileges of the bargaining unit's members, and thereby violates Article VII.

For all of the foregoing reasons, the Union asks that the grievance be granted, and that the Village be directed to reinstate the January 2001 version of Special Order 01-2.

The Position of the Village

The Village takes the position that the grievance is wholly without merit and should be denied. Initially the Village argues that the Union's expressed concerns over adverse consequences from the revised Special Order are overstated and, in any event, do not amount to a contract violation. While the Union fears that the paid on-call firefighters may absorb some overtime opportunities, their own witnesses admit that there is no guarantee of overtime in the contract, nor any guarantee that any particular person or classification will be called back for overtime, and further concede that the history has been that call-backs alternate between paid on-call and full-time firefighters. The Union's alleged safety concerns ignore the fact that paid on-call firefighters have always performed the same duties as full-time firefighters, and that there is no additional training required to be hired full-time after one has been on-call. Both groups receive exactly the same training. No complaints have ever been received about the level of service provided by paid on-call firefighters and no incident of substandard service has been identified. The Union's concern over its status as the exclusive representative of firefighters is factually incorrect. The Union has the right to represent full-time firefighters, and it continues to do so. The paid on-call firefighters have been a feature of this Department for as long as the Union has been, and the Special Order does nothing to alter the Union's standing.

The Union's contractual claim that a past practice has been modified is likewise without factual support. The contract preserves practices existing as of 1972. The only evidence concerning staffing levels in 1972 was the testimony of former Chief Strange, who noted that the minimum staffing for a rescue call was two full-time firefighters. Since 1972, it has frequently been the case that paid on-call personnel have accompanied full-time firefighters as the third person on rescue calls, and this has been done with the knowledge of – and often at

the instigation of – the full-time personnel. Statistics bear out the conclusion that using a paid on-call firefighter as the third man on a crew has been a normal occurrence in this department, and is not a departure from past practice.

The Union bears the burden of proof in this matter, and the contract provides no support for the Union. Indeed the clear and unambiguous terms of the labor agreement support the Village. The Management Rights clause of Article III permits the Village “to utilize personnel, methods and means in the most appropriate, efficient and flexible manner possible.” The clear meaning of this is that the Village has the right to determine staffing levels, and determine which personnel most appropriately meet the demands of any particular call. The Chief testified, without contradiction, that it would be impossible to maintain required minimum staffing levels without the use of paid on-call personnel for calls. This conclusion is buttressed by the additional language of Article III that the Chief retains the right “to make assignments of jobs, to determine the size and composition of the workforce, and to determine the competence and qualifications of the employees.” Allocating paid on-call firefighters to each call that comes in allows the Chief to insure that some experienced full-time personnel are in the mix for each call, along with the on-call employees the Chief judges to be competent and qualified for the work. The unrefuted testimony also shows that the more regular assignment of paid on-call personnel to rescue calls will allow them to participate more fully and improve their skills and the teamwork of the Department as a whole. These are legitimate goals under Article III. Finally, the Village notes that Article III allows the Chief “to schedule overtime work when required in the manner most advantageous to the Fire Department.” Even though reducing overtime costs is not the purpose of the revised Special Order, this contractual provision plainly allows for that result.

The Union’s reliance on Article VII is misplaced. That contract provision preserves rights and privileges enjoyed as of December 1, 1972, except as modified in the contract or by mutual agreement, and provides that any challenge to a change will be measured by a standard of “reasonableness.” As noted above, the minimum staffing levels in effect as of December of 1972 did not include a minimum of three full-time firefighters on a rescue call. Thus there has been no change that could implicate Article VII. Even if there had been, the Chief’s goal of insuring a proper mix of personnel and providing training opportunities for paid on-call personnel is clearly reasonable.

Article IX is also cited by the Union. Contrary to their argument, however, the clear language of the provision favors the Village. Article IX, Section 9.01 provides time and a half for overtime work performed to maintain “minimum standards of manpower that are determined by the Fire Chief.” It also provides that, “whenever applicable, such overtime shall be distributed on a seniority list basis on a rotation.” Again, however, the Union concedes that there is no guarantee of overtime in the contract. Section 9.01 is aimed at the distribution of scheduled overtime – it does not apply to call backs. Section 9.02 applies to call backs and it says nothing about distributing callback opportunities by seniority. The practice has been to alternate call backs between full-time and on-call firefighters, and that practice is unchanged. Nothing in either Section 9.01 or 9.02 can be read to promise that the Village will create overtime when it is not warranted.

The Union's appeal to the Safety language of Article XXIX should be dismissed as unwarranted and self-serving. Paid on-call personnel have been a fact of life in this Department for many years, without any proof of a safety concern. Moreover, increasing the use of paid on-call personnel for rescue calls increases their level of experience and opportunities for training. This can only improve safety levels within the Department. The Village notes that full-time personnel apparently have no safety concerns when they want the paid on-call personnel to substitute for them on-call-backs or rescue runs.

Finally, the contract's zipper clause does not come into play in this matter, since it applies only to contract language, and not to policies of the Fire Chief. The Association provided no evidence and no rationale for its citation of this provision, nor its citation of the Savings Clause, and these aspects of its argument should be dismissed.

The Village notes the Union's repeated reference to its "failure to bargain" over the change in the Special Order, and responds that the arbitrator is not the proper forum for such a complaint. If the Union truly believes that the Village has engaged in some type of illegal, unilateral change, its remedy lies with the Wisconsin Employment Relations Commission, not with a grievance arbitrator. This allegation is, in any event, patently untrue. The parties did in fact bargain over this topic. The Association made a proposal in the Spring of 2002 to substantively amend the Management Rights clause in order to take away the Chief's discretion to schedule paid on-call employees. Having made this proposal, and then dropped it, the Association admits that the current agreement authorized the Special Order.

In summary, there is no contract language supporting the Association's position. Neither has the Association proved the existence of any type of binding past practice. In order to bind the parties, an unwritten practice must be clear, unequivocal and well established. The only practice meeting these standards is the Village's practice of adjusting manning levels to meet the needs of the Department. Former Chief Strange testified that staffing levels were regularly adjusted during his career, and that there was never a fixed practice of restricting any rescue call to full-time firefighters. The record demonstrates that Fire Department management has always enjoyed considerable latitude in assigning personnel to rescue calls. The Association was fully aware of this, and never objected or demanded to bargain over this practice. To the extent that a practice has been proved, it is a practice that supports the Village. For all of these reasons, the grievance should be denied.

DISCUSSION

Special Order 01-2 was issued in January of 2001, and was intended to improve the training opportunities for paid on-call firefighters, in part by creating a ride-along program. The Order was revised in June of 2001, generating this grievance. The revision that prompted the Union's challenge was a change in the last paragraph of the Special Order from "Ride-alongs will not affect the minimum of (4) full-time personnel on duty" to "Paid On-call Firefighters will be assigned a position and work detail by the OIC for the time they are in the station. The number of call back personnel will be adjusted during this period of time."

At the outset of this Award, it is important to note what this case is not about. Notwithstanding the fact that the sentence promising that the ride along program would not affect the minimum manning for the station was removed in the revised Order, this case has nothing to do with minimum manning for the shift. The Chief testified that assigning on-call firefighters to a position and a work detail would not affect minimum manning by full-time firefighters, and that the deletion of the sentence in the revised version was made simply because he felt it was understood by all parties that minimum manning would not be changed. There is no reason to question that assertion.

The material difference between the revised Special Order and the status quo before the revision is that on-call firefighters may be assigned to duties, specifically to ride as the third person on a call, rather than as the fourth person. This allows the Officer In Charge to send a three person crew – two full-time and one on-call -- to a first call, and hold back two full-time personnel in the event that a second call comes in. While it does not affect the overall staffing of the station, it does reduce by one the number of firefighters that might be sent on a first call, thus reducing by one the number who must be called back to duty to cover the possibility of a second call. Since call backs are done by alternating between the lists of full-time and on-call personnel, the number of call back opportunities for full-time personnel would be reduced by one for every two call backs whenever an on-call firefighter acted as the third person on the crew. /1

1/ As noted at the hearing, the actual impact on overtime is speculative, since full-time firefighters have the right to refuse call backs, and the alternation system applies only to the order of calling. The openings are filled by the first persons called who agree to respond. Thus a call back for two positions might actually be filled completely by full-time personnel or completely by on-call firefighters.

The contract contains no express guarantee of overtime, nor any specific language preventing the assignment of an on-call firefighter as the third person on a crew. The Union cites five articles of the contract as relevant to this dispute: Article VII - Existing Rights and Privileges, Article IX – Overtime Pay, Call-Back, Training, Article XXIX – Safety and Health, Article XXXII – Conditions of Agreement, and Article XXXIII – Amendments and Savings Clause. Of these five, the last two are apparently cited for the proposition that the contract may not be amended except through a written agreement. This proposition is not seriously in dispute, but it is not the source of any substantive right of the Union to restrict the assignment of duties to on-call personnel or require a certain number of full-time firefighters on a rescue call. The substantive arguments made by the Union are rooted in Articles VII, IX, and XXIX.

Article VII – Existing Rights and Privileges

Article VII establishes December 1, 1972 as the date for measuring unspecified “rights and privileges” of employees, and requires that any non-consensual change to those rights and privileges be measured against a standard of reasonableness:

In the event the Village revises employee rights and privileges which existed as of December 1, 1972 and which have not been modified by mutual consent, the reasonableness of any such revision shall be subject to Article XIII, Grievance Procedure. In the event a grievance is filed, such revisions shall be stayed pending determination under the Grievance Procedure

A successful grievance under this provision requires that the Union prove two things – first, that the change went to some right or privilege existing in December of 1972, and second that the change was not reasonable. The Union’s evidence in this case does not cross the first threshold. The unrefuted testimony of former Chief Strange was that manning for ambulance calls in 1972 was two firefighters. Even assuming that this constituted a right or a privilege within the meaning of Article VII, there is nothing to show that the change to three firefighters as a normal crew when new equipment was purchased in the late 1970’s was negotiated with the Union or was otherwise a matter of mutual consent. To the contrary, Strange said the change was solely prompted by new equipment and that a two man crew was still employed sometimes after the new equipment came in, if the Officer In Charge judged that to be the proper response. The relevant benchmark under Article VII for staffing first rescue calls is thus two full-time firefighters, which is unchanged under the Special Order.

Even if the change effected by the Special Order is viewed as an impairment of the right or privilege to call-back overtime, and assuming for the sake of argument that this right or privilege existed in 1972, it is difficult to make out a violation of Article VII. Article VII allows reasonable changes. Judging reasonableness requires an examination of the reasons for the change and the impact of the change. Here the Village justifies the revised Special Order in terms of improving the training for on-call personnel and reducing the number of unnecessary call backs. Certainly there is an advantage to having on-call personnel assigned specific duties, in that they are then exposed to more of the routing and procedure of the firehouse, as well as having more patient contact opportunities in the field. The patient contact aspect of this could have been accomplished without the revision to the Special Order. It appears that the Union is correct in its view that the revision was aimed more at reducing call back opportunities than at training issues. Even there, however, it is difficult to find that reducing call backs is an unreasonable step under a contract which contains no guarantee of overtime and specifically provides that the Village has the right to “schedule overtime work when required in the manner most advantageous to the Fire Department” (Article III, Section 3.01(7)). Furthermore, both Fedder and Strange testified that there had been longstanding problems in getting full-time employees to respond to call backs. A change that allows the Department some measure of certainty that a second call will be staffed as well as a first call, without having to rely on the response to a call back, is on its face a reasonable objective for management.

Balanced against the legitimacy of the Department’s objectives is the impact on the full-time firefighters. The Special Order would potentially allow a three man crew with one on-call firefighter to respond to a first call, and reduce by one the number of slots the Department

needs to fill by call-back. Because calls are alternated by list between full-time and on-call personnel, half of the time when an on-call firefighter is on duty this would, at least theoretically, impact the members of the bargaining unit. As of the time of the arbitration hearing, there were nine on-call firefighters, each of whom would be scheduled for a four-hour shift per month. This would occupy 36 of the 730 hours in an average month, or roughly 5% of the time. At the full authorized staffing of 16 on-call firefighters, there would be an on-call firefighter on duty 64 hours per month, or 9% of the time. Even assuming, as I do, that the Department would seek to schedule the on-call employees during those hours when calls are more frequent, the actual economic impact of this change on full-time firefighter overtime opportunities is not terribly pronounced. It is not completely insignificant, but it appears that in over 90% of cases, the Special Order would have no impact at all on call back overtime opportunities for full-time firefighters.

In addition to the concerns about the economic impact of the proposed change, the Union cites concerns over the integrity of its bargaining unit, and the quality of care provided to the citizens, and the safety of using on-call personnel in place of full-time firefighters. The latter point is addressed below. As for the integrity of the bargaining unit, given the Chief's testimony that minimum manning is not affected by the revised Special Order, and the fact that on-call firefighters have been allowed to respond to second calls and, on occasion first calls, for many years, it is not at all clear how the bargaining unit's integrity or the Union's representative status is affected by this change. This is not a case where the use of on-call staff is reducing the overall size of the bargaining unit or the number of personnel assigned to shifts. The work they are being assigned to on the training shifts is the same work they perform when called in or when allowed to ride on calls in the past. While the Union's concern about the future is understandable, the question before the arbitrator is the reasonableness of the Special Order as it stands, not the mischief that might be made at some future date.

Turning to the question of levels and quality of service, the Union presented testimony from a Madison firefighter which was intended to show that the training received by on-call firefighters in Greendale is inadequate. First, the fact that Madison maintains a fire academy and requires its new hires to attend without giving credit for prior on-call experience says nothing about the adequacy of Greendale's training program. Second, Firefighter Gorzalski was an on-call firefighter for only four months in Greendale before joining Madison. The record does not reveal whether his relative inexperience played some part in his being assigned to the academy, or if in fact all firefighters joining the Madison Fire Department attend the academy, without regard to prior experience. Madison's choice to operate a fire academy reflects that Department's standards for training and preferences as to how to deliver that training. While I do not doubt that the fire academy is a superior training experience, its existence does not make Greendale's inadequate.

The Union also made the point that the level of expertise that can be expected of a full-time firefighter is greater than that to be expected of an on-call firefighter. The City responded that both groups are required to have the same training and certifications. That may be true,

but it stands to reason that someone who responds to 300 calls each year will be more proficient than someone who responds to 15 calls per year. The level of service provided to the public is generally understood to be principally the decision of public management, in this case the Fire Chief. The Management Rights clause of the contract is replete with the standard language of collective bargaining agreements reserving these decisions to the Village. Here the Fire Chief and the former Chief both testified that they were satisfied that the on-call personnel could perform competently on calls. Moreover, any employer must make some judgments as to the appropriate balance between providing the best care possible with existing personnel and the need to train inexperienced personnel, so that care can continue to be provided in the future. Every single member of this Department started as an on-call firefighter and presumably did not become instantly competent on the day he or she was hired as a full-timer. Thus, while it is certainly true that a crew composed of two full-time employees and one on-call employee will not have the level of expertise as a crew consisting of three full-time employees and one full-time employee, that fact does not make the Special Order an unreasonable change. In connection with this, it is worth noting that the decision to hold back full-time personnel for a second call will likely increase the quality of care provided in those cases.

In summary, this record does not allow a finding that Article VII has been violated. There is no evidence that either a crew of three full-time firefighters for rescue calls or some sort of automatic call back of full time employees was a right or privilege existing as of 1972, or was the result of some subsequent agreement between the parties. Neither can the change be said to be unreasonable. The revised Special Order answers a training need of the Department, and at the same time reduces unnecessary call backs, which is consistent with the terms of the negotiated Management Rights clause. The change has a minor impact on overtime opportunities, but does not implicate the integrity of the bargaining unit. While it may somewhat reduce the level of expertise on the crew responding to the first call, that is a reasonable tradeoff for the increased training it provides to the on-call personnel and the possibility of increasing the level of expertise on the crew responding to a second call.

Article IX – Overtime Pay, Call-Back, Training

Article IX specifies the rate of pay in call back situations, and provides that “Whenever applicable, such overtime shall be distributed on a seniority list basis in rotation.” While the Union cites this language in support of the grievance, its witnesses agreed that it was not a guarantee of overtime, and that call backs were as a matter of established practice alternated between the full-time and on-call lists. Given this, there is nothing in the Article that bears on this grievance. Where there had been a need to call back bargaining unit members, they have been paid appropriately. The issue in this case is whether Management is required to create or to preserve call back opportunities, not how those opportunities are filled or paid.

Article XXIX – Safety and Health

Article XXIX addresses safety:

29.01 The Village and the Union agree to cooperate to the fullest extent in the promotion of safety and health. To this end, all members of the bargaining unit agree to abide by Safety Rules of the Greendale Fire Department and to actively participate in a Greendale Fire Department physical fitness program, mutually agreed upon by the Village of Greendale, Local 1777, I.A.F.F. and the Fire Chief.

The Union’s evidence concerning safety was principally focused on the safety of the public, and is recited above in the discussion of how levels of service impact the reasonableness of the decision. Article XXIX, fairly read, addresses the safety of employees, not the safety of the public. The first sentence speaks of generally promoting safety and health, but the second sentence fleshes this out by saying “to this end” employees will abide by safety rules and participate in physical fitness programs. There is no evidence at all that including on-call firefighters on crews responding to a first call poses a risk to the full-time firefighters. If it did, presumably that risk would be the same as now exists on second calls and the change would spread the risk more evenly across all calls.

Granting that the Union has an understandable concern about where the use of on-call firefighters for assigned duties on training shift might lead in the future, the issue in this case is the legitimacy of revised Special Order 01-2. That Order does not violate any provision of the labor agreement. According, the grievance is denied. On the basis of the foregoing, and the record as a whole, I have made the following

AWARD

1. The Village of Greendale will not violate Article 7, 9, 29, 32 and/or 33 of the collective bargaining agreement if it implements revised Special Order 01-2, Department Training Sessions, in which the following language is deleted:

“Ride-a-longs will not affect the minimum of (4) full-time personnel on duty”

and replaced with:

“Paid On-call Firefighters will be assigned to a position and work detail by the OIC for the time they are in the station. The number of call back personnel will be adjusted during this period of time.”

2. The grievance is denied.

Dated at Racine, Wisconsin, this 13th day of January, 2003.

Daniel Nielsen /s/

Daniel Nielsen, Arbitrator