

BEFORE THE ARBITRATOR

---

In the Matter of the Arbitration of a Dispute Between

**LOCAL UNION NO. 3879  
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL-CIO-CLC**

and

**VILLAGE OF MENOMONEE FALLS**

Case 70  
No. 62226  
MA-12203

*(Stand-By Duties Grievance)*

---

Appearances:

**Joe Conway**, 5<sup>th</sup> District Vice-President, International Association of Firefighters (IAFF), 821 Williamson Street, Madison, Wisconsin, for the labor organization.

**Atty. Sean Scullen**, Quarles & Brady, LLP, Attorneys at Law, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4497, for the municipal employer.

**ARBITRATION AWARD**

Local Union No. 3879, International Association of Firefighters (IAFF), AFL-CIO-CLC and the Village of Menomonee Falls are parties to a collective bargaining agreement which provides for final and binding arbitration of disputes arising thereunder. The Union made a request, in which the Village concurred, for the Wisconsin Employment Relations Commission to appoint a member of its staff to resolve a grievance over the interpretation and application of the terms of the agreement relating to employee duties during standby-time. The Commission designated Stuart D. Levitan to serve as the impartial arbitrator. Hearing in the matter was held on June 9, 2003, in Menomonee Falls, Wisconsin; a stenographic transcript was available to the parties by June 13. The Village submitted written arguments on July 31 and August 26; the Union submitted a brief on August 5, and on September 4 waived its right to file a reply. Thereafter the arbitrator invited the parties to consider ways in which the dispute could be resolved voluntarily; the parties agreed to do so, and on December 22, the

arbitrator and the parties participated in a settlement conference. On January 14, 2004, the Village informed the arbitrator that settlement discussions had been unsuccessful. The award below is based exclusively on the record evidence from the arbitration hearing and the written arguments of the parties, and excludes any evidence or arguments arising out of the settlement conference.

### ISSUE

The Union frames the issue as:

“Did the Village violate the collective bargaining agreement assigning bargaining unit members expanded duties in filing out incident reports? If so, what is the remedy?”

The Village frames the issue as:

“Whether the Village violated the parties’ collective bargaining agreement by requiring firefighters to fully and accurately complete call documentation during their standby time. And if so, what is the appropriate remedy?”

I frame the issue as:

“Did the Village violate the collective bargaining agreement by increasing the number of data fields it required firefighters to complete in computerized call-documentation during standby time? If so, what is the appropriate remedy?”

### RELEVANT CONTRACTUAL LANGUAGE

#### PREAMBLE

Whereas both parties are desirous of facilitating a peaceful adjustment of all grievances and disputes which may arise from time to time between the Employer and its employees for whom the association acts as the bargaining agent, the parties hereto do hereby agree as follows:

• • •

- D. Existing Benefits: The Employer intends to continue other authorized existing employee benefits affecting wages, hours and conditions of employment not specifically referred to or modified by this Agreement.

...

**ARTICLE IV**  
**MANAGEMENT RIGHTS**

The normal functions of management and the direction of working forces including, but not limited to, the hiring of employees, suspending, discharging, or otherwise disciplining of employees, establishing reasonable rules and regulations, scheduling of work, the determination of methods and means of operations, and the control and regulation and use of all equipment are exclusive functions of the Employer; provided, however, that in the exercise of such functions the Employer shall observe the provisions of this Agreement and applicable State and local laws.

**ARTICLE VII**

**HOURS**

...

**SECTION 4.** Bargaining unit members shall have a paid lunch from Noon to 1 PM and shall perform standby duties Monday through Saturday from 6 AM to 7 AM and from 4 PM to 6 PM, all day Sunday and on New Year's Day, Labor Day, Christmas Day, and Thanksgiving Day. When on standby, bargaining unit members shall perform AM equipment readiness checks, respond to calls, restore equipment to a state of readiness after a call and perform emergency duties. If the lunch period is interrupted by a call, such lunch period can be taken at another non-standby time that day.

...

**ARTICLE XXII**

**GRIEVANCE PROCEDURE**

...

- A. The grievance process must be initiated within ten (10) working days of the incident or within ten (10) working days of the grievant being aware of the incident. Any grievance not reported or filed within the time limits set forth above shall be invalid and shall not be processed further through the grievance procedure.

...

## BACKGROUND

Among its general government responsibilities, the Village of Menomonie Falls operates a Fire Department, under the direction and control of Chief Robert Coon. In October 2002, the Village and Union Local 3879, International Association of Firefighters (IAFF) entered into their first collective bargaining agreement, effective January 1 2002-December 31, 2003. As of the time of hearing, the City employed four bargaining unit firefighters/EMTs, along with a number of unrepresented paid on-call and volunteer firefighters/EMTs and various supervisory personnel, including five full-time lieutenants, one full-time deputy chief and one full-time chief. 1/ The most senior EMT, either supervisory officer or firefighter, is in command on an incident run or EMS call.

---

1/ As used below, "firefighters" denotes members of the bargaining unit, unless specified otherwise.

---

Under the agreement, firefighters work twelve-hour shifts, 6 a.m. to 6 p.m. The shifts rotate, so that each firefighters works 96 hours (of which eight hours are paid lunch breaks), in a two-week period. For the first time, the agreement also provides for "standby time," when firefighters can only be required to "perform AM equipment readiness checks, respond to calls, restore equipment to a state of readiness after a call and perform emergency duties." Monday through Saturday, standby time is the first hour of duty in the morning (6-7) and the last two hours in the afternoon (4-6). Sunday and on four enumerated holidays, the entire shift is standby time. The parties have mutually understood that to "respond to calls" also includes memorializing the incident with the necessary and appropriate reports.

As part of their normal and expected duties, firefighters complete both handwritten and computerized reports. State statutes and regulations require the department and thus its personnel to complete and file, as appropriate, the Wisconsin Fire Incident Reporting System (submitted to the state Department of Commerce) and the health department ambulance report (submitted to the state Department of Health and Family Services). An ambulance report is completed, signed and provided to the receiving health facility as a handwritten document, with the firefighter retaining carbonless copies, while a fire incident report is later transferred to a database program and entered via computer. While the lieutenants, paid on-call, part-timers and office staff have all been trained to fill out the reports, as of the hearing only firefighters (both represented and non-represented) were completing that duty, with the senior firefighter on the call having the primary responsibility.

Previously, the Department required firefighters to enter both the emergency medical services (EMS) information into the Wisconsin Emergency Medical Services Information

System (WEMSIS), and the general incident report onto an Access database. As offered into evidence as employer exhibit 4, the WEMSIS program appears to have had 12 screens. Then in 2001 the State of Wisconsin discontinued technical support for the WEMSIS software, leaving the Village to choose new software. On January 1, 2002, the Department implemented its new Firehouse program, an integrated relational database that replaced both WEMSIS and the Access database. Because it is an integrated relational database, entries made once are replicated throughout as appropriate, saving a considerable number of keystrokes.

The Firehouse program has vastly more data fields than WEMSIS or the Access program. When the department implemented WEMSIS in January 2002, the chief did not require the firefighters to fill out all the data screens; instead, to the extent all fields were indeed filled out on all occasions, the duty was discharged by non-unit staff and/or supervisors. As the chief became more skilled in administering the new program, he increased the number of screens the firefighters were required to complete. As of hearing, the firefighters were required to complete 88 separate screens. Most of the screens which the firefighters did not previously have to complete relate to ambulance calls rather than fire calls.

In addition to meeting its statutory and regulatory reporting obligations, the department uses the data it collects for analysis of service needs and projections. The manner in which the chief now directs that the Firehouse program be completed produces data the department uses for planning, payroll, and other statistical purposes that exceed state requirements. By preserving and analyzing detailed patient data, the full Firehouse program improves the department's planning for service-delivery and budgetary needs, and thus its overall management.

At its implementation, the direction that the firefighters fully complete the Firehouse program doubled or even tripled the time firefighters formerly needed to enter their required reports. As the firefighters have become more adept at data entry, the average time for completing a full Firehouse report has settled at about 20-30 minutes, up from the 10-15 for the previous reports.

The Department has not adopted a policy giving priority to immediate data entry following a call. The Department does have a policy making training sessions and inspections a higher priority than data entry. The Department has and will direct firefighters to complete all necessary computer reports prior to leaving. Firefighters who are directed to remain at the end of their shift to complete reports are paid overtime.

During negotiations for their first collective bargaining agreement, the parties exchanged proposals relating to hours of work. At one point on November 19, 2001, the parties considered the following proposal:

November 19, 2001

VILLAGE OF MENOMONEE FALLS & FIREFIGHTER/EMTS

HOURS OF WORK

SECTION 1

The standard workday for firefighters/emts, shall consist of twelve (12) hour shifts beginning at 6 a.m. and ending at 6 p.m. The standard workweek shall be forty eight (48) hours of work in which each firefighter/emt shall be scheduled to have every other weekend off and shall not be scheduled to work more than four (4) days in a row. The initial schedule shall be:

(attachment omitted)

...

SECTION 4

Firefighter/emts shall have a paid lunch from noon to 1 p.m. and shall perform standby duties Monday through Saturday from 4 p.m. to 6 p.m., all day Sunday and on New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve afternoon, Christmas Day and New Years Day afternoon. When on standby, firefighter/emts shall respond to calls, restore equipment to a state of readiness after a call and perform such other duties as may require immediate attention. If the lunch period is interrupted by a call, such lunch period can be taken at another time that day.

...

The record does not indicate who prepared this document, offered into evidence by the Union. As admitted into the record, the document bore two handwritten edits relating to section 4, as follows:

- The word "immediate" is circled and the word "emergency" is written in a lower margin;
- The references to Memorial Day, Independence Day, and the afternoons of Christmas Eve and New Years Day are struck through, and the other holidays are underlined.

The record does not indicate who made these handwritten edits.

At 2:30 p.m. on November 19, 2001, the Village presented an amended offer to the Union:

### HOURS OF WORK

#### SECTION 1

The standard workday for firefighters/emts shall consist of twelve (12) hour shifts beginning at 6 a.m. and ending at 6 p.m. The standard workweek shall be forty eight (48) hours of work. The schedule shall be:

(attachment omitted)

...

#### SECTION 4

Firefighter/emts shall have a paid lunch from noon to 1 p.m. and shall perform standby duties Monday through Saturday from 6 a.m. to 7 p.m., and from 4 p.m. to 6 p.m., all day Sunday and on New Years Day, Labor Day, Christmas Day and Thanksgiving Day. When on standby, firefighter/emts shall perform A.M. equipment readiness checks, respond to calls, restore equipment to a state of readiness after a call and perform emergency duties. If the lunch period is interrupted by a call, such lunch period can be taken at another non-standby time that day.

...

The formatting and type-face on this employer response was identical to those of the earlier-cited proposal. At 2:55 on November 19, 2001, following a minor amendment not relevant to this grievance, Rokenbrodt and a representative of the village initialed these provisions as constituting a tentative agreement on hours of work.

The parties continued to bargain other elements of their agreement, ultimately utilizing the services of a Wisconsin Employment Relations Commission staff mediator. The parties reached a full tentative agreement the following fall, and ratified their first collective bargaining agreement on October 21, 2002.

At 8:49 on Tuesday, October 29, 2002, Chief Coon wrote to Union president Kevin Rokenbrodt as follows:

I have had a couple of people ask if you need to complete reports during your standby time. I brought this very issue up during mediation. The mediator (with an annoyed look on his face) stated that it went without saying that completing reports is part of the response. Therefore, past practice, legal requirements, and common sense dictate that reports be completed, even if you are on your "standby time."

At 4:35 the following afternoon, Rokenbrodt wrote Coon as follows:

So that we can understand what your interpretation is of Article VII Section 4 of the contract (and to try to prevent problems) please send me a list of everything you believe Association members should be doing on our "standby time." Please include what "completing reports" involves.

Thank you.

At 9:09 on the morning of Thursday, October 31, Coon replied:

I am a little surprised that after working here for more than 3 years, and completing hundreds of reports, there is any confusion on what "completing reports" involves. But, to be perfectly clear, "Completing Reports" involves:

- An INCIDENT REPORT, entered accurately and completely into Firehouse, including all required tabs (RESPONSE, PROPERTY & INVOLVEMENT, NARRATIVE) for all responses.
- An EMS/SEARCH & RESCUE report (listed under ADDITIONAL REPORTS), entered accurately and completely into Firehouse for all ems calls.
- A RESPONDING UNITS report (listed under ADDITIONAL REPORTS) for all responses.
- A PERSONNEL & ACTIVITIES report (listed under ADDITIONAL REPORTS) for all responses.

Regarding your request for a "list," I will let common sense prevail and deal with individual concerns on an individual basis.

I hope this clears up any confusion.



Thanks

On February 3, 2003, at 9:15 a.m., Coon sent Rokenbrodt the following e-mail:

While reviewing the incident reports, I noticed a number of errors in a report you completed for a call to butler (sic) on 1/31/03 at 11:30 AM. The errors are:

- Aid Given box is not correct.
- Action taken should be more specific. If you were cancelled enroute (sic), that should be the choice.
- Property involvement should be the name of the building you were dispatched to, not Butler.
- Must add a narrative, this was not an EMS report.
- None of the times appears to be correct.
- 2752 is listed as a unit that responded, it did not.
- 2772 is checked as a medical call.
- 2781 is not listed.

Please go back and make the above corrections and notify me when completed.

In the future, please make sure that your reports are accurate and complete.

On February 6, at 1:19 p.m., Rokenbrodt replied that he had made the necessary corrections.

On February 13, at 10:48 a.m., Lt. Scott Burgardt wrote Rokenbrodt as follows:

Kevin,

I would like to recap our conversation that took place on Wednesday February 12, 2003.

As long as I can remember we have required personnel to enter accurate, complete and professional incident reports. In the recent past we have used a number of different methods to record incident reports electronically. We used Versa Form, Access, and currently Firehouse. We started entering the EMS reports into WEMISIS. When the state decided not to support the WEMISIS, we started, and currently still use the Firehouse EMS report format.

In an effort to maintain accurate and complete reports, the computer now will not accept inaccurate information. It has always been the responsibility and duty (and we hope the desire) of each person to fill out an accurate and professional incident and EMS report. Nothing has changed.

Thanks,

On February 17, Rokenbrodt filed the following Step 2 grievance:

**Village of Menomonee Falls  
Employee Contract Grievance Report**

**Grievance Step:** 2

**From:** Kevin Rokenbrodt

**Position:** Firefighter/EMT

**Bargaining Unit:** IAFF Local 3879

**This grievance alleges violation of:** Article VII Section 4, and Preamble Section D

**Describe the grievance:** On February 12<sup>th</sup>, I called Lt. Burgardt to present a grievance from the Association. We feel that the additional information that we have been told has to be entered on the reports in the computer constitutes additional duties that will sometimes have to be done during our standby time, and is therefore a violation of the contract. We are filing this as a group, however to show a date I was told of having to enter these additional fields on the 31<sup>st</sup> of January, within the 10 working days we have to file a grievance. He response was that the department has always required this work and nothing has changed, so he was not processing this any further. We disagree. The time it takes to enter a report has gone from approximately 15 minutes to approximately 45 minutes. We do not dispute entering these additional fields during non-standby time, only during our standby time.

**Describe relief sought:** We want our job duties to revert back to what they were previously in dealing with what information needs to be entered in the computer for incident reports during our standby time.

**Date Filed:** 02-17-03

On March 5, Coon replied as follows:

Kevin:

I have reviewed your February 17, 2003 written grievance report and the e-mail reply you received from Lt. Burgardt on February 13, 2003, as well as numerous other e-mails dealing with the issue of completion of reports on standby time.

As you undoubtedly recall, this issue was raised and addressed a few days after the contract was signed on October 21, 2002. Specifically, on October 29, 2002, I sent an e-mail to all union members reaffirming the obvious expectation that completing reports is, always has been and will continue to be an integral part of call response. Your grievance is thus well beyond the ten day time limit for filing a grievance pursuant to Article XXII Section 1(A) of the contract, which states that any grievances not reported or filed within the time limits set forth therein are invalid, and is being denied on that basis.

Moreover, I concur with Lt. Burgardt that there has been no violation of the contract with regard to the issues you allege. To begin with, additional duties have not been added to those standby duties you have always performed. Indeed, completing thorough and accurate reports of each call has always been an integral part of responding to calls – which the contract explicitly lists as a required standby duty. The duties have not changed; rather, only part of the process has changed, as the software used to record the information required in the reports is new. Prior to changing our current software (Firehouse), we had been entering call information into an Access database for incident reports, and a State of Wisconsin supported database called WEMESIS for EMS reports. I am sure you recall using both programs. We were notified in late 2001 that the State would no longer support the WEMESIS software. This forced us to find new software and on January 1, 2002 we began using Firehouse. While the change in software may have resulted in additional time required to complete reports. Possibly even only temporarily while greater familiarity with the software is required, that does not make the work of completing reports additional duty.

Further, Article VII, Section 4, which delineates duties that are required to be performed during standby hours by stating they “shall” be performed, does not by its terms create a limitation on the duties that may be required to be performed. In addition, the way in which reports are completed is not a

“benefit” within the meaning of the Preamble, Section D. Instead, that determination is a matter explicitly reserved to the Department’s discretion under the Department’s management rights as set forth in Article IV of the contract.

For the foregoing reasons, I do not believe that your grievance was timely filed or that the Department has in any way violated the parties’ contract. Accordingly, your grievance is denied.

### **POSITIONS OF THE PARTIES**

In support of its position that the grievance should be sustained, the Union asserts and avers as follows:

The collective bargaining agreement clearly limits the duties required to bargaining unit employees during stand-by time. Nowhere in the complete list of stand-by duties is the task of data entry into the department’s computer system listed.

Bargaining history defining the duties that are performed during stand-by time supports the Union position, in that the phrase “such other duties that may require immediate attention” was rejected in favor of “perform emergency duties.” This change clearly illustrates a restriction on what duties are to be performed during stand-by time.

Since written ambulance reports must be filled out and given to the receiving facility, it is clear that these reports must be completed in conjunction with the call regardless of when the call takes place. But a number of tasks may take precedence before data entry of those handwritten reports is accomplished.

It is clear that the written report is part of the call, where data entry into the computer is a separate tasks that is not part of the call. Data entry into the computer system is not required during standby time.

Furthermore, in addition to unit employees, lieutenants and part-time firefighters have the ability and responsibility to complete call documentation. Sustaining the grievance will not cause undue hardship to the Village, in that other employees are able to complete data entry. Call documentation is not exclusive to bargaining unit members, but standby time is.

Also, data entry into the departmental computer system is not required by law, nor were there numerous errors made by bargaining unit personnel. Contrary to the assertion by the Village attorney, no evidence was presented of any laws that warranted anything other than the handwritten reports that are completed by the firefighters prior to leaving a receiving facility. Since these forms are signed by the individual completing them and are legal documents, it would stand to reason that these handwritten documents are completed accurately.

The Village did not provide any evidence that any bargaining unit personnel were entering reports inaccurately in 2002. The fire chief's reasoning to change the entire report entering process because of errors and omissions are unsupported and suspect.

Finally, the fire chief is incorrect in his assertion that the bargaining unit members have created a past practice and waived the provisions of Article VII, Section 4 by performing data entry during standby time. While members of the unit have occasionally performed data entry during standby time, this has been done on a voluntary basis and does not constitute a past practice and does not modify the language in the collective bargaining agreement.

Accordingly, because computer data entry is not part of the emergency call, it is not a required duty during standby time.

In support of its position that the grievance should be denied, the Village asserts and avers as follows:

Completing call documentation reports is a standby duty, a fact confirmed by the parties' practice with regard to that duty. As the Union conceded during the hearing, firefighters clearly are required to complete call documentation during standby time, because that duty is part of "responding to calls" within the terms of the collective bargaining agreement. Any argument that firefighters were not required to complete all aspects of the report in the Firehouse software prior to January 2003 was not supported by the record evidence. By e-mail dated October 29, 2002, the Village made perfectly clear to the Union that it expected full and accurate call documentation, including all related tabs in the Firehouse software.

Because the Union failed to file any grievance following Chief Conn's Oct. 29, 2002 e-mail, but did not do so until early 2003, this grievance is untimely under

the Article 22 requirement that all such actions be filed within ten days of the Union's awareness of the event.

Even if the grievance is found timely, the Union's failure to make any immediate protest to the October e-mail is evidence of its acquiescence in the chief's understanding and the Village's position.

Evidence shows the department hasn't materially increased or changed the reports already of required. Many if not most of the fields the Union claims were new requirements were also previously required in WEMSYS. However, even if use of the new Firehouse software means firefighters are required to complete a number of additional fields, it cannot be found that completing those fields constitutes a separate duty.

Further, based on the plain meaning of the collective bargaining agreement, the determination of the manner and method by which call documentation reports are to be completed is exclusively a matter reserved to the Village's discretion. Under the clear and unambiguous language of Article IV, the Village has the clear and unfettered right to implement the Firehouse software. The Union's reliance on Section D of the Preamble is misplaced.

Because acceptance of the Union's position would allow the union to achieve through arbitration what it did not achieve through bargaining, the Union's position must be rejected.

The Village's requirement that firefighters fully and accurately complete call documentation reports constitutes a reasonable exercise of its management rights. The Union not only failed to establish that the department has exercised its rights for an unreasonable purpose, but has also failed to establish that the exercise of the right to determine means and methods of completing call documentation has unreasonably impacted firefighter standby time.

The Union's interpretation should also be rejected because it is unreasonable and, unlike the department's proposed interpretation, is inconsistent with the purpose of the provision. Adoption of the Union position would also lead to absurd and illogical results, including firefighters not completing reports on Sunday and the Village being prevented from replacing its existing fire apparatus with equipment that takes longer to restore to a state of readiness than its current equipment.

The Union waived its right to file a reply brief. In its reply, the Village posits further as follows:

The Union's contention that entering call documentation reports on the computer cannot be required during standby time is meritless, incredible, unsupported and contradicted by the union's own testimony. As the Union's president and sole witness testified, the Union explicitly understood when it ratified the collective bargaining agreement that completing call documentation was part of responding to a call, and would thus be required to be completed during standby time. This understanding is further reinforced by the Union's proposed remedy.

Further, sustaining the grievance would create an undue hardship to the village by leading to unreasonable delays in completing necessary reports. Granting the Union the remedy requested would also impermissibly provide the firefighters with something they neither sought nor obtained in bargaining, namely a specific designation of the amount of time it may take to perform any duty they are required to perform during standby time.

Moreover, accurate call documentation reports are a legal requisite and the village has consistently required that firefighters prepare call documentation reports without materially changing that expectation. At no time has the Village changed the entire report-entering process, nor significantly expanded the amount of information that the firefighters are required to enter as the Union contends. The expectation that firefighters fully complete reports has not changed, only the fact that the software may not presently allow an individual firefighter to incorrectly enter a particular field, or to skip it altogether.

Because the Village has consistently required firefighters to complete call documentation reports at the conclusion of a call and has not materially changed the amount of work required to complete the duty; and because call documentation has always been a part of the standby duty of responding to a call, and that call documentation now necessarily involves computer data entry, the Union has not established that the Village breached the language or intent of the parties' agreement. The Village has permissibly exercised its management right to determine the manner and method in which call documentation is to be completed.

### DISCUSSION

By this grievance the union challenges the fire chief's order that firefighters spend an additional 15-20 minutes completing an expanded data entry program when they return from a

fire or ambulance call, even if that requires the firefighter/EMTs to do computer work during “standby” time. In its defense, the village claims the grievance is untimely, and contrary to its management right to determine methods and means of operations. The employer also asserts that granting the remedy sought by the union would impose an unreasonable hardship by preventing the timely filing of necessary reports.

The village has a strong challenge on timeliness, which is a procedural absolute. Under Article XXII, if the grievant doesn’t present the grievance orally to the immediate supervisor within ten working days of becoming aware of the incident, the grievance “shall be invalid and shall not be processed further through the grievance process.”

Rokenbrodt gave his oral presentation to Lt. Scott Burgardt on Wednesday, February 12, 2003. Thus, given his staggered schedule, any change in the list of required data fields which became known to him prior to January 29 could not form the basis of a valid grievance.

The village correctly notes that Coon’s email of October 31 put the union on notice that he believed that standby time duties included entering numerous reports into the Firehouse system, as follows:

- An INCIDENT REPORT, entered accurately and completely into Firehouse, including all required tabs (RESPONSE, PROPERTY & INVOLVEMENT, NARRATIVE) for all responses.
- An EMS/SEARCH & RESCUE report (listed under ADDITIONAL REPORTS), entered accurately and completely into Firehouse for all ems calls.
- A RESPONDING UNITS report (listed under ADDITIONAL REPORTS) for all responses.
- A PERSONNEL & ACTIVITIES report (listed under ADDITIONAL REPORTS) for all responses.

Because the union took no step to challenge Coon’s email of October 31, this level of reporting responsibility cannot form the basis for a valid grievance. Coon’s statement of reporting requirements is the best contemporaneous understanding of the practice as of ratification.

The union says it is not challenging the October 31 level of reporting, but asserts that Coon increased the firefighter responsibilities after that. The employer maintains that it has not materially changed the reporting duty. Although the record is, sadly, somewhat hazy, it does appear from the testimony and written evidence that sometime after ratification Coon



required greater attention to certain data fields, including making some which were previously entered by non-unit clerical and supervisory personnel the mandatory responsibility of firefighter/EMTs. It is this change from the *status quo*, which Rokenbrodt sets at January 31, which the Union cites as the predicate incident.

Coon's testimony is not particularly precise on this point, but it does confirm that as his own mastery of the system grew, he did learn how to set non-mandatory fields as mandatory. This acknowledgment corroborates the union's underlying assertion, namely that Coon increased the unit's duties following ratification.

Generally accepted arbitral practice holds that "doubts as to the interpretation of contractual time limits or as to whether they have been met should be resolved against forfeiture of the right to process the grievance." Elkouri and Elkouri, BNA Books 5<sup>th</sup> Edition, 1985, p. 277. As the distinguished arbitrator Robert Howlett explained a generation ago, the party raising the affirmative defense of untimeliness "has the burden of proof, whether in the sense of going forward with the evidence or establishing its case by a preponderance of the evidence." MIAMI INDUSTRIES, 50 LA 978, 984 (Howlett, 1968).

Rokenbrodt testified, and the union argued, that there was a Jan. 31 effective date for the increased data duties, and that the new duties constituted at least a doubling of the existing workload. Coon took issue with the extent of the increase, but did acknowledge a gradual increase in firefighter responsibilities as their facility with the system grew, and did not assertively rebut Rokenbrodt's account.

The village bears the burden of establishing that the grievance is untimely. It has not done so. Rokenbrodt testified under oath that the department imposed additional reporting requirements, beyond those reflected in Coon's emails of October, and that it did so on or about January 31. At hearing, the village questioned this assertion but did not convincingly rebut it. Although I am troubled by the lack of any contemporaneous documentary evidence as to a January 31 implementation of new reporting duties, the sworn testimony of Rokenbrodt and Coon satisfy me that Rokenbrodt's oral presentation to Lt. Burgwardt on February 12 constituted a timely filing of the grievance.

I turn now to the merits of the matter.

At the outset, I note the parties' clear and established practice of firefighters completing written and computerized reports while on standby time. Whether or not I would have assumed that "respond to calls" necessarily included full call documentation, the parties have acted in understanding that it has, so that is my understanding as well.

The village correctly cites the agreement's management rights clause, particularly as to "the determination of methods and means of operations," as providing a basis for its initial decision to adopt the Firehouse program. The only limitation in its exercise of this right is that it "shall observe the provisions" of the collective bargaining agreement. The collective bargaining agreement has no provisions limiting the employer's ability to institute new technology for reporting the incidents to which it responds. Thus, the village was well within its managerial rights to select the Firehouse program and see to its implementation.

Further, the village's decision to adopt the Firehouse program was neither arbitrary nor capricious, but was in fact an appropriate response to forces outside the village's control – namely, the state's decision to discontinue support for WEMISIS. After the state's unilateral action, there was nothing for the village to do but find another program; after due investigation and deliberation, the village chose Firehouse.

The data that the firefighters enter is important; its compilation and analysis improves the overall management of the department and the efficient delivery of its protective services. More than just recording what *has* happened, the program enables the department to plan for what might happen; the village cited the excellent example of using the demographic patient data to forecast trends and anticipate needs.

It is also true, however, that not all the data which the firefighters enter will even indirectly impact emergency response. Coon acknowledged on cross-examination that some of the January 31-level data will be used for payroll, personnel and other administrative/internal matters, matters which have no direct bearing on the delivery of protective services.

Good management of the department is obviously in the public interest, but it is ultimately management's obligation. While the union certainly cannot impede management in the proper exercise of its rights, neither can management require the unit personnel to perform the tasks properly attendant upon that management.

As the union rightly argues, the parties' bargaining history is relevant and supportive of its cause. The exchange of proposals on November 19, 2001 shows the employer seeking to include "immediate duties" in the list of standby duties, before agreeing to the union's counter of "emergency duties." While certainly not dispositive, this explicit and unambiguous exchange shows that when choosing between two attitudes towards standby duties, the parties opted for the one less likely to interrupt standby time. There are many duties which may require immediate attention, but which do not constitute emergencies; the fact that the parties chose the more stringent standard for interrupting standby time is a factor for me to consider. Thus, I reject the employer's argument that the union is seeking to obtain through grievance arbitration something which it failed to get in the bargaining process.

Ultimately, the question becomes one of degree. At the time of ratification, firefighters were clearly fully engaged in the Firehouse system, as noted in Coon's October emails. I have found that Coon thereafter increased the number of mandatory fields. If the increase were substantial *as measured against the existing duty*, a grievance could stand; if the increase were nominal, the grievance would fall.

Although the record is not the most direct and unambiguous recitation of facts I have ever received, I believe I have a sense of the scale of the January 31 reporting requirements, as measured against the level existing in late October. Union exhibit 3 reflects 88 separate screens which firefighters could be required to complete under the January 31 standard; the union asserts that 70 of these screens were not covered by the earlier, October 31 standard. While the village took issue with one or two screens, it did not satisfactorily rebut the gist of the union's argument. It is also noteworthy that the earlier WEMSYS program appears to have had only 12 screens which the firefighters needed to complete, making the October level of Firehouse reporting roughly comparable to the earlier requirement.

By any standard, going from 18 screens to 88 is a vast increase in duties; even allowing for a few mislabeled entries, the change from the October standard to that of January is significant and substantial. Moreover, the department didn't just change the *amount* of reporting it assigned the firefighters; it changed the *nature* of the reporting, going beyond what was required to adequately and accurately document the incident or EMS run and reaching a level of record-keeping more appropriate to departmental administration.

As the employer argues, there are elements of the union's proposed remedy which cause concern. First, the union seeks to have its "job duties to revert back to what they were previously in dealing with what information needs to be entered in the computer for incident reports during our standby time." This is unacceptable, the village asserts, because demanding that the *status quo* at ratification be maintained without alteration could prevent the department from purchasing new fire apparatus if such machinery required more time for morning equipment readiness checks.

I understand and to some extent share the employer's concern. But again, the question is one of degree. I have already found the department had the right to adopt new technology (instituting Firehouse) for data entry and direct the firefighters to adapt to its use. The only question is whether the extent of that adaptation was excessive. Similarly, I see nothing in the collective bargaining agreement that would prevent the department from employing new machinery; a question could flow, though, as to how extensive the new duties due to that new machinery would be. That is, the department could change the ambulance or hook-and-ladder it used, even if that added *some* new cleaning or restocking duties to the firefighters; as to

whether or not the village might someday seek to include new cleaning or restocking duties too excessive to be borne during standby time, I leave to future proceedings, if any.

The employer also asserts that the union's refusal to perform full data-entry during standby would cause significant operational difficulties. In particular, Sundays and listed holidays are identified as standby days in their entirety; to sustain the grievance would therefore result in exempting the full-time represented firefighters from the responsibility of fulfilling the January 31 level of reporting for all calls arising on a Sunday or holidays. To this the union counters that there are other personnel on the runs who can perform that data entry, namely lieutenants and on-call firefighters.

I agree with the employer that an award would be contrary to the public health, safety and welfare if it prevented all qualified and informed personnel from filing the necessary reports for ambulance runs and fire calls in a timely manner. Indeed, the consequences of which the employer warns are of serious concern. But I don't believe they have to happen, either because non-unit personnel would be available to perform the duty, or because the *necessary and required* reporting could still be performed by unit firefighters even during standby time; it is only the supplemental level of reporting that is at issue in this grievance.

Chief Coon testified that the language in the collective bargaining agreement was "not necessarily specific to all duties that would – could be allowed or would be expected to be allowed during the standby time." In his March 5 denial to Rokenbrodt, Coon also wrote that the collective bargaining agreement "does not by its terms create a limitation on the duties that may be required to be performed." To the contrary, I believe the language *does* limit the duties that can be assigned to unit firefighters during standby time – namely, performing morning readiness checks, responding to calls, restoring equipment to a state of readiness following a call, and performing emergency duties.

In an era of budget constraints and high demand on our protective service personnel, it may seem to some that the union is being petty in protesting the assignment of an incidental duty that occasionally takes 10-15 minutes out of their standby time. For its part, the union has achieved the significant benefit of securing standby time in its first collective bargaining agreement, and is naturally reluctant to see any encroachment into that period. Ultimately, of course, I make no value judgment on the decision to *bring* this grievance; my only responsibility is to determine the merits of the grievance itself.

The union suggests a separation of reporting duties between those which relate to the call itself (as reflected in Coon's October 31 memo) and those which relate to broader administrative concerns (the January 31 requirement). I believe this is the key to an appropriate remedy.

The department can require firefighters to do data entry on the Firehouse program during their standby time. The department can require that firefighters complete the January 31 level of reporting. The only thing the department cannot do is require firefighters to complete the January 31 level of Firehouse reporting *while they are on standby time*.

Accordingly, on the basis of the collective bargaining agreement, the record evidence and the arguments of the parties, it is my

**AWARD**

1. That the grievance is sustained.
2. That the employer may not require firefighters on standby duty to complete data entry into the Firehouse program beyond the level of reporting required as of January 29, 2003.
3. That to resolve any disputes which may arising in the implementation of this award, I shall retain jurisdiction in this matter until April 1, 2004.

Dated at Madison, Wisconsin, this 25<sup>th</sup> day of February, 2004.

Stuart Levitan /s/

---

Stuart Levitan, Arbitrator

