

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

CITY OF WAUSAU

and

WAUSAU FIREFIGHTER ASSOCIATION LOCAL 415, IAFF, AFL-CIO and CLC

Case 105

No. 63346

MA-12554

(Paramedic acting pay grievance)

Appearances:

John B. Kiel, Shneidman, Hawks & Ehlke, S.C., appearing on behalf of Wausau Firefighter Association Local 415, IAFF, AFL-CIO and CLC.

Dean R. Dietrich, Ruder Ware, Attorneys at Law, appearing on behalf of the City of Wausau.

ARBITRATION AWARD

The City of Wausau, hereafter City or Employer, and Wausau Firefighter Association Local 415, IAFF, AFL-CIO and CLC, hereafter Union, are parties to a collective bargaining agreement that provides for the final and binding arbitration of grievances. The Union, with the concurrence of the City, requested the Wisconsin Employment Relations Commission to appoint a Commissioner or member of the Commission staff to hear and decide the instant grievance. Susan J.M. Bauman was so appointed. Mediation of the grievance was unsuccessful, resulting in a hearing on August 11, 2004, in Wausau, Wisconsin. The hearing was not transcribed. The record was closed on November 4, 2004, upon receipt of post-hearing written arguments.

ISSUE

The parties were unable to stipulate to an issue or issues for resolution in this case. However, they agreed that the Arbitrator could frame the issues based upon the relevant evidence and argument, as well as the parties' suggested issues. The Union suggested the following issue for determination:

Does the City of Wausau violate the collective bargaining agreement when it refuses to pay Article 12 acting pay to Local 415 members who are receiving paramedic premium pay under Appendix B? If so, what is the appropriate remedy?

The Employer suggested the following statement of the issue:

Whether the City violated the labor agreement in the manner in which it compensated employees with paramedic license when the employee is assigned as Acting Engineer? If so, what is the appropriate remedy?

Based upon the relevant evidence and argument in this case, the undersigned adopts the Employer's statement of the issue.

RELEVANT CONTRACT PROVISIONS

Article 12 – SALARIES

A. Schedule: Appendix “A” shall be the schedule of wages payable to employees of the Fire Department.

. . .

C. Acting Pay: When assigned to work in a higher classification for four (4) hours accumulative or more per shift, the member of the bargaining unit shall receive the compensation for that classification for each full hour so assigned. For the position of Acting Engineer, the senior Firefighter at their respective station where the opening occurs will act. If that Firefighter is not present, the assignment will be filled by seniority from the crews [sic] roster. The Acting Lieutenant Roster shall be composed of Engineers and Firefighters with a minimum of 5 years seniority who volunteer to work.

APPENDIX A MONTHLY WAGES

. . .

Certified EMT: EMT – Basic \$10.00/day; EMT Intermediate/EMT – Basic IV-Tech - \$15.00/day. EMT pay is paid when an employee is assigned to such duty for eight (8) hours or more in a duty day. . . .

Firefighter/Inspections and Lieutenant/Inspections shall receive annual pay of \$300 for each of the required certifications outlined in position requirements . . .

APPENDIX B

. . .

E. INITIAL TRAINING PROGRAM FOR PARAMEDICS

1. The initial Program participants shall be selected on a seniority basis, excluding MPO's and Lieutenants.

. . .

G. COMPENSATION

1. Participation in the Paramedic Program shall be compensated for their initial training per Article 13G, except that the total compensation (at time and one half pay on the student's hourly wage) shall not exceed \$7,500.
2. When the City becomes certified as a Paramedic Services provider, EMT-P's shall receive in addition to their base pay rate:

At time of EMT-P licensure – 6%
After 5 years as an EMT-P – 7%
After 10 years as an EMT-P – 8%

APPENDIX C HAZARDOUS MATERIAL

There are hereby established hazardous material (HazMat) classifications and HazMat pay as follows:

- 1.85% of a top step Firefighter's annual salary for HazMat certification.
- 2.5% of a top step Firefighter's annual salary for HazMat Assistant Team Coordinator and/or Team Coordinator (if appointer from within the bargaining unit).

Incentive will be paid on a yearly basis. The first payment will be made when the City receives their first payment from the State for regional responder designation. Thereafter, payment will be made on the first payday in February. Payments will be prorated by the month. . . .

RELEVANT BACKGROUND

This case presents the question of pay at such time as firefighters who hold a paramedic licenses are working a shift in the capacity of Acting Engineer, a position that does not require such a license. Although the City of Wausau has provided emergency medical service for many years, it is comparatively recently that the Fire Department upgraded to provide Paramedic Services. The 2001-2002 collective bargaining agreement provides, in Appendix B, for the manner in which initial participants in the EMT-P program shall be selected (on seniority basis), excludes MPO's (Motor Pump Operators) and Lieutenants from selection, and provides a schedule of compensation for persons licensed as EMT-Ps, to become effective when the City becomes certified as a Paramedic Services provider.

During contract negotiations for the current collective bargaining agreement between the parties, 2003-2004, issues of compensation and classification were again addressed. The parties agreed to the creation of the position of Engineer, a rank higher than MPO but lower than Lieutenant. The Employer developed a draft of the tentative agreement and submitted it to the Union. This draft included Paramedic wages as part of the wage table in Appendix A that lists classifications and pay rates. The Union noted that this should be removed, as "Paramedic wages are outlined in Appendix B as an increase over base salary already listed." This change was incorporated in the final agreement. Thus, Appendix A, Monthly Wages, lists rates effective January 1, 2003 and January 1, 2004 for the classification of Lieutenant, Engineer, MPO and Firefighter, respectively, at various levels of experience.

Both the 2001-2002 and 2003-2004 agreements contain language regarding acting pay. The language was revised in negotiations for the current contract to reflect the creation of the new position of Engineer and to specifically provide the manner in which an Acting Engineer would be selected, if needed. The first sentence of that section is unchanged in each of the two contracts: "When assigned to work in a higher classification for four (4) hours accumulative or more per shift, the member of the bargaining unit shall receive the compensation for that classification for each full hour so assigned."

Appendix B of the current agreement provides that the Wausau Fire Department "will maintain a pool of EMT-I trained personnel sufficient to meet the needs of the Program plus a reserve pool of EMT-I trained individuals. The pool shall consist of 18 operational members below the rank of Motor Pump Operator and a reserve pool of 3 members which may include Lieutenants and Motor Pump Operators." Appendix A of the Agreement specifies the manner in which EMTs, other than EMT-Ps are to be paid:

Certified EMT. EMT - Basic \$10.00/day; EMT Intermediate/EMT Basic-IV-Tech - \$15.00/day. EMT pay is paid when an employee is assigned to such duty for eight (8) hours or more in a duty day.

This agreement also provides that initial Program participants (EMT-Ps in the Paramedic program) shall "be selected on a seniority basis, excluding MPOs and Lieutenants."

That is, EMT-Ps are firefighters. Compensation for participants in the Paramedic Program is specified in Appendix B, Section G, which indicates that EMT-Ps

shall receive in addition to their base pay rate:

At time of EMT-P licensure - 6%
After 5 years as an EMT-P - 7%
After 10 years as an EMT-P - 8%

The Wausau Fire Department also maintains a Hazardous Material (HazMat) program for which additional pay is provided to individuals with HazMat certification and to those who serve as HazMat Assistant Team Coordinator and/or Team Coordinator. This additional pay is expressed as a percentage of the top step Firefighter's annual salary. There are no qualifications in the collective bargaining agreement as to when individuals receive the additional pay, other than that the incentive will be paid on a yearly basis.

On May 30, 2003, the Union filed a grievance on behalf of "All Paramedic Acting Drivers" in which the Union stated that "Acting Drivers who are paramedics receive no additional pay when assuming Driver (Engineer) duties. All Paramedics who have assumed the acting Driver role have been affected." The relief sought by the Union was that "Acting Engineer pay should be engineer pay plus paramedic pay (percent added to base pay) when acting as a Driver the Base pay for that time is as an engineer. Paramedic pay is a percentage added to base pay."

The grievance was denied at all levels, and the issue proceeded to arbitration.

POSITIONS OF THE PARTIES

The Union

The position of the Union is that the combination of Appendix B of the collective bargaining agreement referencing paramedic premium pay and Article 12 of the agreement regarding acting pay are two distinct sections of the agreement between the parties. Individual bargaining unit members who are both firefighter-EMT-Ps and serving as Acting Engineer are entitled to concurrent compensation under both contract provisions. The Union points to the parallels between the HazMat premium pay and the paramedic premium pay and argues that since members of the HazMat team receive their premium regardless of the classification they fill on a particular shift, the paramedics should receive their premium regardless of the classification filled on a particular shift.

The City

To the contrary, it is the position of the City that firefighters are only paid the paramedic premium pay when they are assigned to work as paramedics. When firefighter-paramedics serve as Acting Engineers, they are only entitled to the additional pay of the higher classification, Engineer. However, because the paramedic premium results in higher pay than Engineer pay, the City has paid firefighter-paramedics at the paramedic rate when serving as Acting Engineers so as to not cause a reduction in pay when serving in the higher classification. The City argues that HazMat premium is paid regardless of classification worked on a particular shift because the HazMat knowledge may be called into use at any time during the shift. In contrast, when a paramedic is serving as an Acting Engineer, he or she does not utilize paramedic skills and it was not the intent of the parties that compensation be provided for that knowledge.

DISCUSSION

The question to be decided is: How is the pay to be computed when a Firefighter-EMT-P serves as an Acting Engineer? According to the Employer, a Firefighter-EMT-P receives his/her regular rate of pay when serving as an Acting Engineer because that rate is actually higher than the base rate for the Engineer classification and there is a policy that an employee should not receive less pay than his/her regular rate of pay if working in an acting capacity. This is illustrated as follows:

As of January 1, 2004, a firefighter with 16 years experience is paid \$3,783.98. With 6% of this base rate added for an EMT-P with less than 5 years experience, the individual regularly receives \$4,011.02. Because the base rate for an Engineer with 16 years experience is \$3,984.96, the Employer pays an EMT-P \$4,011.02, regardless of whether that individual is serving as a firefighter-EMT-P or an Acting Engineer.

The Union takes the position that when a Firefighter- EMT-P is serving as an Acting Engineer, that individual should be paid the base rate of an Engineer, \$3,984.96, plus 6% of this base, for a total of \$4,224.06.

The issue presented is how the language of Article 12, Section D regarding acting pay is to be reconciled with the language of Appendix B, Section G regarding compensation for EMT-Ps. The Article 12 acting pay provision states:

When assigned to work in a higher classification for four (4) hours accumulative or more per shift, the member of the bargaining unit shall receive the compensation for that classification for each full hour so assigned.

The Appendix B compensation provision for EMT-Ps states:

When the City becomes certified as a Paramedic Services provider, EMT-P's shall receive in addition to their base pay rate:

At time of EMT-P licensure - 6%
After 5 years as an EMT-P - 7%
After 10 years as an EMT-P - 8%

The phrase "higher classification" is not defined in the Agreement between the parties. However, it is clear from the Salary schedule and practice that Lieutenant is a higher classification than Engineer, which is a higher classification than MPO, which is a higher classification than Firefighter. It is also clear, both from the collective bargaining agreement and the bargaining history, that Paramedic (EMT-P) is not a classification. There is no question that when a firefighter who is not an EMT-P serves as an Acting Engineer, s/he is entitled to the compensation of an Engineer for each hour worked in that classification, if four (4) or more hours are worked in the Engineer classification.

Appendix A is very clear in specifying that additional pay of \$10.00/day and \$15.00/day is to be provided to EMT-Basics and EMT Intermediate/EMT-Basic IV-Techs, respectively, "when an employee is assigned to such duty for eight (8) hours or more in a duty day." This proviso does not appear in Appendix B which sets forth compensation for EMT-Ps. Instead, the language of that section provides that "EMT-P's shall receive in addition to their base pay rate" a certain percentages of their base pay rate.

A review of these sections makes clear that when the parties intended that additional pay was to be paid only when they were working in a particular capacity, they knew how to write language to specify that limitation on payment of the additional money. For that reason, Acting Engineer pay for firefighters certified as EMT-Basic or EMT-Intermediate is not an issue. Similar limiting language was not written into the collective bargaining agreement for EMT-Ps. The Employer argues that it was its intent to only pay the additional monies to EMT-Ps when they were working in that capacity. Given the clarity of the language with respect to EMT-Basics and EMT-Intermediates, the undersigned is not willing to read such a limitation on premium payment for EMT-Ps into the contract between the parties where they failed to include it themselves.

The Union argues that the language of Appendix B providing premium pay for EMT-Ps is akin to the language of Appendix C regarding premium pay for HazMat certified personnel. The Employer contends that the HazMat premium differs from EMT-P premium because HazMat certified personnel must always be ready to respond to a hazardous material situation.

These persons receive the additional pay, in effect, for holding the HazMat certification and being on-call to utilize this knowledge. This is different, the Employer contends, than an EMT-P who is serving as an Acting Engineer. Under those circumstances, an EMT-P is paid to perform the duties of an Engineer, duties above and beyond that of a firefighter, but not including utilization of the knowledge and skills obtained through the EMT-P licensing process.

This argument cannot be sustained. Just as HazMat certified individuals receive the HazMat premium for the knowledge they have obtained and their readiness to perform HazMat duties at any time, EMT-Ps retain their additional medical knowledge when driving fire apparatus and, depending on the circumstances on the scene, may well be called upon to utilize these skills, even when the primary reason they are on site is because they are serving as an Engineer. An EMT-P responding to a call in an Acting Engineer capacity may well be called upon by the EMT-Ps on the scene to utilize his or her EMT-P training and skills.

Under the Employer's interpretation of the agreement, paramedics serving as Acting Engineers receive their regular paramedic pay because it is higher than the Engineer pay "[b]ased upon City policy that Employee should not receive less pay than regular rate of pay if working in an Acting capacity." (Employer Exhibit 1) There is no independent evidence of such a City policy. It appears to the undersigned that this policy was put into place by the City to support its reading of the contract that EMT-Ps should not receive the Paramedic premium when serving as Acting Engineers, but realized that a loss of pay for serving in an acting capacity would be unfair. The contract is silent on this point. I find that the lack of a statement of this "policy" supports the Union's position that EMT-Ps are to be paid the paramedic premium at such time as they serve in an Acting Engineer capacity.

Having found that Firefighter-EMT-Ps are entitled to the paramedic premium when serving as Acting Engineer, there remains the question of how that amount is to be calculated. The Union contends that the EMT-P premium for a Firefighter-EMT-P serving as an Acting Engineer is to be a percentage of the Engineer base pay. The language of the agreement states that "EMT-P's shall receive in addition to their base pay. . ." a certain percentage based on longevity. Although the Firefighter-EMT-P may be serving as an Engineer, the base pay for that individual remains his or her base pay as a Firefighter. Thus, I find that the proper manner of calculating wages for EMT-Ps assigned as Acting Engineer is that, in addition to the base rate of the Engineer, the individual shall receive an additional percentage of his/her base rate as a Firefighter. The following illustrates the Employer's position, the Union's position, and my interpretation of the collective bargaining agreement:

FIREFIGHTER 16 YEARS EXPERIENCE: BASE RATE	\$3,783.98
If EMT-P with less than 5 years experience:	
6% of base pay is	227.04
AMOUNT PAID AS FIREFIGHTER-EMT-P	\$4,011.02

ENGINEER 16 YEARS EXPERIENCE	\$3,984.96
EMPLOYER POSITION	
PAYS EMT-P SERVING AS ACTING ENGINEER	\$4,011.02
UNION POSITION:	
ENGINEER 16 YEARS EXPERIENCE	\$3,984.96
EMT-P with less than 5 years experience	
6% of Engineer base pay	239.10
AMOUNT UNION THINKS EMT-P ACTING ENGINEER	\$4,224.06
AWARD	
ENGINEER 16 YEARS EXPERIENCE	\$3,984.96
EMT-P with less than 5 years experience	
6% of base pay is	227.04
AMOUNT EMT-P SERVING AS ACTING ENGINEER SHOULD RECEIVE	\$4,112.00

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

AWARD

1. The grievance is sustained. The City violated the labor agreement in the manner in which it compensated employees with paramedic licenses when the employee is assigned as Acting Engineer.

2. The City is to compensate Firefighter-paramedics who were required to act as Engineers since May 30, 2003 in accordance with this decision.

The undersigned will retain jurisdiction for a period of 60 days following the issuance of this award for purposes of resolving issues of remedy.

Dated at Madison, Wisconsin, this 8th day of December, 2004.

Susan J.M. Bauman /S/

Susan J.M. Bauman, Arbitrator

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