

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**WAUWATOSA PROFESSIONAL FIREFIGHTER'S ASSOCIATION,
LOCAL 1923, IAFF-CLC**

and

CITY OF WAUWATOSA

Case 124
No. 64735
MA-12993

(Firefighter Bahr Transfer Pay Grievance)

Appearances:

Scot Fridrick, Vice President/Grievance Chair, P.O. Box 26214, Wauwatosa, WI 53226, appearing on behalf of the Association.

Beth Thorson Aldana, Assistant City Attorney/Personnel Director, City of Wauwatosa, 7725 West North Avenue, Wauwatosa, WI 53213-0068, appearing on behalf of the City.

ARBITRATION AWARD

Pursuant to the terms of their collective bargaining agreement, the City of Wauwatosa (hereinafter referred to as either the City or the Employer) and the Wauwatosa Professional Firefighters Association, Local 1923, IAFF-CLC (hereinafter referred to as either the Association or the IAFF) requested that the Wisconsin Employment Relations Commission designate Daniel Nielsen as arbitrator of a dispute over the denial of transfer pay to Firefighter Michael Bahr. The undersigned was so designated. A hearing was held on July 26, 2005, at the City Hall in Wauwatosa, at which time the parties submitted such exhibits, testimony and other evidence as was relevant to the dispute. No stenographic record was made. The parties submitted post-hearing briefs, which were exchanged through the undersigned on August 8, whereupon the record was closed.

Now, having considered the evidence, the arguments of the parties, the contract language, and the record as a whole, the undersigned makes the following Arbitration Award.

ISSUE

There was little substantive dispute about the issue before the arbitrator, and the parties agreed that the arbitrator should frame the issue in his award. The issue may be fairly stated as:

Did the City violate Article IV of the collective bargaining agreement when it denied the Grievant's request for transfer pay for the shift beginning on January 6, 2005? If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

Article IV – Work Hours and Duties

. . .

Section 10: Transfer Pay

Members shall be compensated for one station transfer per shift worked, at a rate of \$15.93 in 2002 and a rate of \$16.48 in 2003, and a rate of \$17.05 in 2004, when a private vehicle is utilized. A station transfer is considered an assignment to more than one station where the new assignment is for the balance of the shift or where the assignment occurs after 5:00 p.m. Station transfer is for individuals, not company transfers. The compensation rate will increase annually with the negotiated wage increase.

BACKGROUND

The facts of this case are fairly straightforward. The Grievant, Michael Bahr, is a firefighter who in January of 2005, was normally assigned to work as a firefighter on Engine 3, at Station 3, for a shift beginning at 8:00 a.m. On January 6th, he reported at 6:30 a.m., to replace a firefighter who had to leave early. The roster posted when he reported showed him in his normal assignment for the 8:00 shift. Just after 7:00 a.m., a revised duty schedule was posted, showing him assigned to serve as an Acting Lieutenant on Rescue 3 at that same station. That same roster showed an Acting Motor Pump Operator assigned at Station 2. His relief arrived at 7:30, and he began checking out Rescue 3 in preparation for his duty on that rig. At approximately 7:45, a revised schedule was posted, showing him having been bumped back into his normal job on Engine 3. He went to Engine 3 and began swapping out batteries and doing other preparatory work.

Just after 8:00 a.m., the final schedule was posted. He noticed the Acting Motor Pump Operator assignment at Station 2. Since he was on the promotional list for MPO, and the firefighter assigned was not, he was entitled to that assignment, and he brought this to the attention of his superiors. He was given the assignment to Station 2, and reported there at about 8:30 a.m.

The collective bargaining agreement provides for transfer pay for firefighters who are moved to different stations after the beginning of the shift. The Grievant sought transfer pay, and it was denied. The basis of the denial was that the MPO opening should have been obvious to him on the 7:00 a.m., version of the schedule, and he should therefore have brought it up before the beginning of the shift at 8:00 a.m. Had he done so, there would have been no payment of transfer pay.

ARGUMENTS OF THE PARTIES

The Position of the Association

The Association takes the position that the City violated the clear terms of the agreement. Article IV, Section compensates firefighters for the inconvenience of transferring stations during a shift. It does not contain any limitation, or waiver, based on when or why the transfer occurs, so long as it is during the shift. It does not excuse clerical errors by the City. Here the Grievant was transferred after the shift began at 8:00 a.m. While the Chief claims he ordered the transfer before 8:00 a.m., he could not recall to whom he gave that order, and it is clear that the Grievant was not told until after the shift began. The City's suggestion that the Grievant should have realized he would be reassigned because of the evident mistake in the prior roster simply ignores the fact that he was busy with other job-related tasks, and had a right to rely on the schedule prepared and posted by management personnel. There is no persuasive evidence that the Grievant somehow tricked the City into transferring him after 8:00 a.m., or acted in anything other than good faith.

The Position of the City

The City takes the position that it did not violate the collective bargaining agreement, and that the grievance must be denied. The City concedes that there was an error in the assignments listed on the rosters it posted on the morning of January 6th, in that the Grievant, rather than Bathke, should have been assigned as the Acting MPO at Station 2. However, that mistake was obvious, and it should have been immediately apparent to the Grievant that he would be assigned to Station 2. Instead of checking the roster carefully, and immediately bringing this to management's attention, the Grievant waited until approximately 8:05 a.m., to raise the issue.

The obligation to check the roster and correct mistakes is shared by management and the firefighters. Both know perfectly well that the roster can and will change right up until the 7:00 a.m., deadline for call-ins. Thus, no one is entitled to rely on the early version of the rosters, and all firefighters are obligated to check the final version when they report for duty. The Grievant acted unreasonably by failing to check the final roster before 8:00 a.m., and thus, by failing to advise management of the error. By waiting until after 8:00 a.m., he either deliberately sought to insure himself transfer pay when none should have been due, or negligently caused the transfer pay issue to arise. Either way, given the shared responsibility for the accuracy of the schedule, it is neither reasonable nor consistent with the purpose of the contract provision to allow the Grievant to claim transfer pay.

DISCUSSION

There are two issues in this case, one regarding the meaning of the contract and one regarding the most reasonable interpretation of the facts. The City contends that the contract must be interpreted to make checking the accuracy of the schedule a shared responsibility, and to preclude payment of transfer pay where an error in the schedule could have been discovered prior to the start of the shift. The Union contends that there is no such provision in the contract, and the correct preparation of the work schedule is management's responsibility.

Certainly management is principally responsible for work assignments and for the preparation of the work schedule. That is a basic management right, and a basic management function. Nor is there any express provision in this Section of the contract exempting payment for transfers that are the result of honest mistakes. There is a strong presumption that a transfer, for whatever reason, effectuated after the start of the shift results in transfer pay. However, this provision of the contract is subject to the common duty of contracting parties to deal with one another fairly and in good faith. Just as management may not manipulate the schedule solely to evade its contractual obligations, employees are not entitled to take advantage of what they know to be bona fide errors by management to claim pay that would not otherwise be due to them. If the Grievant knew shortly after 7:00 a.m., that he should have been assigned to the MPO vacancy, and simply stood silent waiting for the shift to begin before raising the question, he would be guilty of bad faith and the City would be entitled to challenge his claim for payment. That raises the factual issue, which is whether under these circumstances, the Grievant must have known he would be working out of Station 2 that day.

The Grievant was working another firefighter's shift when the schedule was posted at 7:02 a.m. That schedule showed him assigned as an Acting Lieutenant. When he was relieved at 7:30 a.m., he began preparing the Rescue unit for the day. At 7:45 a.m., or so, he saw on the revised schedule that he had been bumped back to his normal assignment, and he shifted over to preparing Engine 3. I cannot conclude, from this sequence of events, that the Grievant must have known prior to the beginning of the shift that he should have been the Acting MPO at Station 2. Both the Acting Lieutenant and the Acting MPO positions were listed for the first

time on the 7:02 a.m., version of the roster. Certainly from 7:02 to 7:45 a.m., when he believed he was assigned as Acting Lieutenant, he would have had little reason to go back and nitpick the other assignments on the schedule. The pay for an Acting Lieutenant is higher than the pay for an Acting MPO. When he was bumped from the Lieutenant's position by an employee with superior rights to that job, fifteen minutes before the start of the shift, he saw that he was scheduled for his normal job and began preparing for that. Given the late change in his assignment, it was reasonable that he would have immediately started preparing for his work on Engine 3. The Acting MPO job was not posted until 7:02 a.m., and he would have had little reason to focus on it at that time, given the assignment he already had.

In light of the sequence of events described here, and the activities the Grievant was engaged in due to the late switch in assignments, I find that it is reasonable to believe that he did not become aware of the error in the schedule until after 8:00 a.m. It follows that the record will not support a finding that he acted in bad faith.

The burden of preparing a correct schedule is principally the responsibility of management, and the contract creates a clear presumption that any transfer effectuated after the start of the shift will be compensated. That presumption can be overcome if the circumstances demonstrate that the employee acted in bad faith – that is, he or she knew the posted schedule was in error and delayed in pointing out the error in order to claim transfer pay. The question of employee knowledge and intent is a factual issue, to be determined from all of the surrounding circumstances. In this case, the surrounding circumstances do not support a finding of bad faith. It necessarily follows that the City violated the collective bargaining agreement by failing to pay the Grievant transfer pay for January 6, 2005.

On the basis of the foregoing, and the record as a whole, I have made the following

AWARD

The City violated Article IV of the collective bargaining agreement when it denied the Grievant's request for transfer pay for the shift beginning on January 6, 2005. The appropriate remedy is to pay him the transfer pay.

Dated at Racine, Wisconsin, this 27th day of September, 2005.

Daniel Nielsen /s/

Daniel Nielsen, Arbitrator