BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

JANESVILLE FIREFIGHTERS, LOCAL 580
IAFF, AFL-CIO, CLC

and

CITY OF JANESVILLE

Case 78
No. 64668
MA-12968

Appearances:

Mr. Patrick Kilbane, 5th District Field Service Representative, International Association of Firefighters, 6847 East County Road "N", Milton, Wisconsin 53563, appearing on behalf of the Union.

Mr. Wald Klimczyk, City Attorney, City of Janesville, 18 North Jackson Street, P.O. Box 5005, Janesville, Wisconsin 53547-5005, appearing on behalf of the City.

ARBITRATION AWARD

City of Janesville, hereinafter City or Employer, and Firefighters Local No. 580, IAFF, AFL-CIO, CLC, hereinafter Union, are parties to a collective bargaining agreement that provides for final and binding arbitration of certain disputes. A request to initiate grievance arbitration and a request for a panel of Commission staff arbitrators was filed with the Wisconsin Employment Relations Commission. The parties selected Coleen A. Burns as Arbitrator and hearing was held on September 21, 2005 in Janesville, Wisconsin. The hearing was not transcribed and the record was closed on October 25, 2005.

ISSUE

The parties stipulated to the following issue

> Did the Employer violate the Collective Bargaining Agreement between the City of Janesville and International Association of Fire Fighters Local 580, 2005-2007, when the Fire Chief denied a work day substitution submitted by Paul Verhalen on January 21, 2005 and, if so, what is the appropriate remedy?

PERTINENT CONTRACT LANGUAGE

ARTICLE I
PURPOSE OF AGREEMENT

The mutual agreement of the City of Janesville and Firefighters' Local #580, International Association of Firefighters, is recognized by this Agreement for the operation of the Janesville Fire Department under methods that will promote effective protection for the people of the City of Janesville and their property; safety to the firefighter; economy of operation; cleanliness, and proper care of the equipment; facilities for the fair and peaceful adjustment of differences that may arise from time to time; and the promulgation of rules and regulations and ethical conduct of business and relations between the City of Janesville and its Firefighters and to this end this Agreement has been reached.

It is further the intent of this Agreement to provide a greater degree of harmony and understanding between the City of Janesville and the Janesville Firefighters by setting forth the duties, responsibilities, and privileges of each with reasonable clarity.

It shall be understood that in this Agreement all Articles or provisions are binding on both parties except in cases where provisions may be invalidated by law. This shall include any provisions, which, as expressed herein, would abrogate the City's authority under law. The City of Janesville and Firefighters' Local #580 agree that there will be no discrimination by either the City or the Local against any employee covered by this Agreement because of his/her membership or activities in the aforesaid Firefighters' Local #580 nor will the City interfere with the right of such employees to become members of the Union.

. . .

ARTICLE VI
HOURS OF WORK

A. Definitions

1. The work day for shift personnel will consist of a twenty-four (24) hour shift beginning at 7:00 AM and ending at 7:00 AM the following day.

2. The work week for shift personnel will average 56 hours, using the three (3) platoon system. The work week for 40 hour personnel will consist of forty (40) hours.

3. A work period for shift personnel will consist of a twenty-seven (27) day period during which the shift personnel will be scheduled for 216 hours of duty. Shift personnel will be paid overtime after 204 hours of compensable work in a 27 day period. Employees assigned to a 40 hour schedule will be scheduled for 40 hours of duty during a 7 day work period, Sunday through Saturday.

. . .

C. Work Day Change.

1. Substituting for one of the members of the bargaining unit may occur only under all of the following conditions:

a. It is voluntary, and

b. It is at the employee's request, not the employer's, and

c. It is not because of the employer's business operation but because of the employee's desire or need to attend to personal matters, and

d. Such substitutions are approved by the Chief or the Shift Commander considering the staffing needs of the department. The Chief or the Shift Commander shall have the right to disapprove trades if the effectiveness of the Department will be hampered, and

e. When substituting work days, a substitution slip will be filled out and returned to the Chief or Shift Commander for approval, and

f. Work day substitutions shall not run more then three (3) consecutive work days unless approved by the Chief, and

g. Work day substitutions shall result in no more than 72 consecutive hours of work.

. . .

ARTICLE XXIII
MUNICIPAL AUTHORITY

The City and the Fire Chief have the right to plan, direct and control the work force; to schedule and assign employees; to determine the means, methods, and schedules of operations; to establish standards; to sub-contract, and to maintain efficiency of employees. The City also maintains the sole right to require employees to observe rules and regulations, to hire, or lay off or relieve employees from duty, to maintain order, to suspend, demote, discipline, and discharge employees. The City shall not take any action which violates the provisions of the Wisconsin Statutes and all provisions of this paragraph relating to hiring and relieving of employees, suspension, demotion, and discharge shall all be under the direction and control of the Police and Fire Commission.

The City has the right to temporarily assign Department personnel to any other duties at such time as civil emergencies or acts of God threaten to endanger, or actually endanger, the public health, safety, welfare, or the continuation of municipal services. The City shall use discretion and reason in making such temporary assignments which shall not be continued beyond the duration of such emergencies. The City has the right to determine what constitutes a civil emergency as expressed in this section. Nothing in the preceding three sentences shall ever be construed as giving the right to assign Department personnel to any duty not being performed by other City personnel because of a labor dispute.

The City shall not assign Department personnel to duties which involve working on, or with, non-department equipment or normally done by other City employees. Personal amenities known to the City and currently practiced by bargaining unit personnel, shall not be changed except by written agreement of the parties.

RELEVANT BACKGROUND

The City's Fire Department operates out of five firehouses and provides a variety of services, *e.g.*, fire fighting, rescue operations, emergency medical, fire prevention/education and fire inspections. The vast majority of Fire Department employees work twenty-four hour duty days, beginning and ending at 7:00 a.m., and are divided among three shifts; designated A, B and C. The shift employees represented by the Union serve in several classifications, including Captains, Lieutenants, Motor Pump Operators, Fire Fighter/Paramedics and Fire Fighters, and may hold certifications which designate them as Divers, Hazardous Materials Technicians, etc.

For over thirty years, the twenty-four hour duty day employees have substituted work shifts; resulting in employees working longer than the normal twenty-four duty day, often forty-eight and sometimes seventy-two consecutive hours. At or about January of 2002, the parties discussed a sick leave grievance resulting from a situation in which an employee was unable to complete his scheduled work; was sent home from work and placed on sick leave. This employee had been working a combination of normally scheduled duty days and work day substitutions. There was a medical determination that this employee had a medical condition that caused the employee to become fatigued. The Fire Chief determined that this employee should not schedule more than forty-eight consecutive hours of work; which restriction was not grieved by the Union.

At or shortly after the discussion of this sick leave grievance, Fire Chief Grorud announced to the Union that he would begin reviewing all work day substitutions that resulted in an employee working more than forty-eight consecutive hours. Prior to this announcement, work day substitution requests were normally reviewed and approved by Shift Commanders.

In March of 2002, the Janesville fire Department Procedure Book was revised to include a guideline that required any request for a work day substitution resulting in more than forty-eight consecutive hours to be approved by the Fire Chief. This guideline includes the following: "All workday substitutions are controlled by Article VI, Paragraph C of the agreement between the City of Janesville and Local 580." The work day substitution request form was also revised to alert Shift Commanders of the requests that needed to be approved by the Fire Chief.

When the parties met to negotiate the contract to succeed that which terminated at the end of calendar year 2003, the Union proposed that Article VI, Sec C, be amended to include the following:

> g. Work day substitutions shall result in no more than 72 consecutive hours of work.

The successor contract was modified to include the above language.

Paul Verhalen, hereinafter Grievant, is employed by the City as a Firefighter. On or about January 27, 2005, the Grievant filed a written grievance with his immediate supervisor, Shift Commander Steve Ballou, alleging that the "Fire Chief denied a work day substitution, because he believed FF Verhalen to be working too many 72 hour shifts in a one month time period."

Union Representative Scott Morovits provided the City with a written "Explanation of Grievance," which states as follows:

> Chief Grorud has denied a trade submitted by Paul Verhalen due to the trade resulting in a third 72 hour shift in February for Paul. The Chief does not have

justification for the denial of the trade other than it generating a third 72 hour shift. During negotiations, the subject of 72 hour trades was discussed and contractual language was agreed upon. Now Chief Grorud is imposing his own conditions on trades. The Chief's conditions are not part of the labor agreement.

Local 580 bargained in good faith with the City of Janesville and the Fire Chief's representative. The terms of the agreement were ratified by the City Council, the membership of Local 580, and the agreements have been signed. Chief Grorud believes that he can impose his own conditions on trades because; he was not present at negotiations. Chief Grorud had Local 580's proposed changes to the labor agreement prior to negotiations, and he had the opportunity to prepare his representative to negotiate his conditions on trades. Deputy Chief Luiting attempted to negotiate the Fire Chief's trading conditions but through the negotiations process, those conditions were not implemented as part of the labor agreement.

Local 580 respectfully requests Chief Grorud stop imposing his own conditions of work-day substitutions, and follow the language that exists in the labor agreement. If the Chief desires to change the contractual language relative to 72 hour trades, he should bring his trading conditions to the bargaining table.

By letter dated February 15, 2005, the Fire Chief responded to the grievance; stating, *inter alia*:

The pertinent facts, in this matter, as I understand them are:

- Firefighter Verhalen desires to trade a work day that results in 72 consecutive duty hours (Feb 15-17)
- Firefighter Verhalen has two other trades already approved that result in 72 consecutive duty hours during the month of February (Feb 4-6 and 24-26)
- Firefighter Verhalen has two additional trades already approved during February, one of which results in 48 consecutive duty hours (Feb 12-13)
- The Fire Chief has denied the above noted trade request
- All trades are subject to the approval of the Chief or his designee

As discussed during our meeting, subparagraph g does allow an individual to work up to 72 consecutive duty hours as a result of trades. However, subparagraph d reads as follows:

> ***d. Such substitutions are approved by the Chief or the Shift Commander considering the staffing needs of the department. The Chief or the Shift Commander shall have the right to disapprove trades if the effectiveness of the Department will be hampered, and***

In this particular situation, I feel the effectiveness of the Department will be hampered because of long term fatigue. Firefighter Verhalen has already been approved to work 72 consecutive duty hours twice during the month of February. Approval of the denied trade request would have resulted in a third 72 hour duty assignment in an approximate three week period, not to mention that it would also result in a fourteenth duty day in the month of February (50%) of the work days)

During our meeting, I offered a compromise that would allow the trade if the total number of 72 hour consecutive duty occurrences were limited, but you caucused and informed me that you were not interested in a compromise.

Therefore, I must stand by my decision to **not** approve the trade. I find no violation of Article VI, Section C, sub 2. Hence the grievance is denied. Please feel free to contact me if you have any questions.

By letter dated February 21, 2005, Union Representative Morovits appealed the grievance to City Manager Steve Sheiffer; stating, *inter alia*, that:

. . .

The City of Janesville and IAFF Local 580 held contract negotiations in March, 2004. During the negotiations a long and frank discussion was held on 72-hour trades. As a result of those negotiations, a TA was reached on 72-hour trades. The second day of negotiations, the City came back and attempted to place limits on the number of 72-hour trades an employee could make, which prompted a brief discussion on "regressive bargaining." The end result was the opportunity now exists for employees to make 72-hour trades without limits. Prior to the 2005-2007 Labor agreement allowing 72-hour trades, there was a long past practice allowing 72-hour trades. In 2002, the Chief unilaterally changed the past practice of approving 72-hour trades after a grievance "opened my eyes" to the volume of 72-hour trades. The union did not grieve the changes; after discussions were held on the unilateral change the union accepted his authority and brought the issue to the appropriate forum, negotiations. Another reason the union did not file a grievance is because the Chief reviewed the already approved 72-hour trades on the books, and did not deny them.

Now the Chief is using his position to impose the same limits that were proposed in negotiations, but were not agreed upon as part of the final ratified contract. Chief Grorud believes he can impose his own conditions on trades because; he was not present at negotiations. He boldly states "You guys did not want me at negotiations," as if that makes a difference. Deputy Chief Luiting represented the Chief and the Fire Department at negotiations. The Chief also had Local 580's bargaining proposals prior to the first day of negotiations. The Chief wants to impose these changes because he believes employees should not be allowed to work a 72-hour trade. He does not have any evidence that an employee cannot successfully complete a 72-hour trade. Employees work 72-hour trades to enable co-workers to have time off for personal reasons, when vacation time or comp time is unavailable.

Local 580 bargained in good faith. It was understood by all parties involved that in exchange for the "Health Insurance Consolidation" a quid pro quo existed, and most "zero cost" items were agreed upon as part of the quid pro quo. The Chief has even stated that "The Manager wanted the Health Insurance Consolidation" and that is why he agreed to the 72-hour trade language. If the Chief were allowed to impose the conditions he wanted, but did not get during negotiations, it would appear as if the City failed to bargain in good faith.

To successfully bring the grievance to a resolve, Local 580 respectfully requests you to instruct Chief Grorud to revert back to the past practice of approving 72-hour trades based on the staffing needs and effectiveness of the department, and to follow the intent of the language from negotiations, which does not impose any limits on the number of 72-hour trades. Local 580 further respectfully requests you to instruct the Chief to refrain from imposing any further unilateral restrictions on the issue of 72-hour trades.

. . .

The City Manager responded in a letter dated March 15, 2005, which states, *inter alia*:

. . . Mr. Verhalen is grieving that a trade, which would have resulted in Mr. Verhalen working 3 72-consecutive hour trades in February was not approved. During the month of February, Mr. Verhalen also had two other trades. The total of all of the trades in February resulted in Mr. Verhalen working a total of 14 days out of 28. During your meeting with the Chief, he offered a compromise to resolve this matter, but the Union was not interested in any compromise. The Union is grieving a violation of Article 6(C).

After careful and full review and consideration of this matter, I find that although the collective bargaining agreement provides the opportunity for firefighter trades and to work up to 72 consecutive hours, it does not provide a

> firefighter's absolute right to trade. In fact, Article 6 (C) 2)(d) of the collective bargaining agreement states: ". . . [s] such substitutions are approved by the Chief or the Shift Commander considering the staffing needs of the department. The Chief or the Shift Commander shall have the right to disapprove trades if the effectiveness of the Department will be hampered, . . ."
>
> The Chief, in his professional opinion, has determined that working 3 72-consecutive hour trades is too fatiguing to any firefighter and to Mr. Verhalen specifically, due to the total number of days he would have worked in February had the third trade been approved. The Chief has the right and is responsible to make sure that necessary and adequate fire services are provided to the citizens of Janesville and I will not overrule his decision on a single trade issue. Indeed, the Chief stated, and the Union did not disagree, that so far in 2005, he has approved 27 of 28 requests to work 72 consecutive hours, and six of these are other requests from Mr. Verhalen. There is no violation of the Labor Agreement and this grievance is denied.

As set forth in the stipulation of the parties, all steps in the grievance process were timely and properly followed by both parties.

POSITIONS OF THE PARTIES

Union

The Grievant testified that, when he asked the Fire Chief for his reason for denying the work day substitution request submitted on January 21, 2005, he was told that this request, resulting in the Grievant working three periods of seventy-two consecutive hours in one month, was too many. During the processing of the grievance, the Union pointed out that, during the most recent contract negotiations, the City had attempted to impose restrictions upon the number of 72-hour work day substitutions and that those restrictions were specifically left out of the agreement. The Fire Chief attempted to resolve the grievance by having the Union agree to the specific restrictions that had been rejected at the bargaining table.

The intent of the language that was agreed upon by the parties, as testified to by the Grievant and Union Representative Morovits, was made clear to the City. On that basis alone, the Fire Chief's reason for denying the Grievant's request should be rejected and the grievance sustained. In his letter, the Fire Chief cites a reason that was not previously offered to the Union, *i.e.*, ". . . I feel the effectiveness of the department will be hampered because of long term fatigue." The Fire Chief offered no factual information to the Union to explain how he formulated this opinion.

As the Grievant testified, he frequently makes work day substitutions which result in his working seventy-two consecutive hours and that, on several previous occasions, he has made as many as three seventy-two hour work day substitutions in a one month period. While

working a period of seventy-two consecutive hours, the Grievant has not been sent home due to illness, fatigue or poor work performance. The Grievant confirms that he has never suffered from fatigue as a result of working seventy-two consecutive hours and that he has never felt as though he could not perform his job.

The City has offered two justifications to support the Fire Chief's opinion. The City's reliance upon the first, a portion of an interview with a medical doctor, is flawed because the focus of the article is sleep disorders and their effects on people who have them. The record is devoid of any evidence that the Grievant has a sleep disorder, or that the Grievant suffered from a lack of sleep while working seventy-two consecutive hours. The Fire Chief's opinion that the Grievant would suffer from "long term fatigue" was documented in his letter of February 15, 2005, nearly three months before the publication of the article relied upon by the City.

The second justification offered by the City is the Fire Chief's professional opinion cited by the City Manager. The Fire Chief justified his professional opinion upon a personal experience from over twenty years ago, in which he remembered "feeling tired" after have worked seventy-two consecutive hours.

Prior to and after the incident involving the January, 2002 grievance, the Fire Chief has approved work day substitutions that resulted in seventy-two consecutive hour work periods. In 2005, the Fire Chief approved twenty-seven of twenty-eight such requests. The consistent practice of approving such requests suggests that the Fire Chief's professional opinion is the opposite of what he claims. As does the Fire Chief's offer to compromise by limiting seventy-two consecutive hour work periods to six in a calendar year, regardless of when they occurred.

The Grievant and Union Representative Morovits both offered their professional opinion that neither they, nor any other employee they knew of, had suffered from "long term fatigue" as a result of working seventy-two consecutive hours. The only instance of fatigue involved the employee who was diagnosed with a medical condition.

In denying the Grievant's request, the Fire Chief cited Subsection d. The staffing needs had been met and no argument was made that staffing needs had anything to do with the denial. The language of Subsection d clearly provides the right to disapprove **if** the effectiveness of the department **will** be hampered. It does not read "might" or "could." It says **will** and the City has not met this burden of proof. The City's management rights are limited by the terms of the parties' agreement.

During bargaining, the Union had made it very clear that they wanted no limits on the number of work day substitutions resulting in seventy-two consecutive hours of work. According to Union Representative Morovits, the City Manager stated that he agreed to no restrictions on the number of work day substitutions resulting in seventy-two hours of work because he knew that the Fire Chief could deny any such requests that he desired. If the City

Manager really believed this, why did he bother to discuss so thoroughly with the Union the limits that the Fire Chief wanted and why did he not share this opinion with the Union instead of leading the Union to believe that the parties were in agreement on a no limits clause to be added to the collective bargaining agreement. The new language regarding the seventy-two consecutive hour work day was one of the quid pro quo issues brought to the table by the Union for the Union's agreement to significant changes in health insurance.

The City had a duty to bargain in good faith over the terms and conditions of the labor agreement. The Union appropriately addressed its concerns regarding work day substitutions at the bargaining table. To allow the City's conduct to go unchecked will chill future contract negotiations and is contrary to the Purpose of Agreement identified in Article 1.

The Fire Chief, beginning in 2002, reviewed work substitution requests involving seventy-two consecutive hours, but never denied such a request prior to the request that gave rise to the instant grievance. The Fire Chief is attempting to unilaterally enforce upon the Union a restriction that was not achieved through contract negotiations and which has existed as a long-standing past practice. The Arbitrator should sustain the grievance and issue the appropriate remedy.

City

Normally, a firefighter works an average of nine days per month, consisting of twenty-four hours shifts. No shift is scheduled to work forty-eight hours in a row.

In October 2005, as in previous years, the Grievant wanted to take most of October off for the purpose of hunting and other recreational activities. To accomplish this, the Grievant had to trade scheduled shifts with other firefighters.

So far in 2005, the Fire Chief approved seven of the Grievant's eight (8) trade requests that would result in 72 consecutive hours of work. The Fire Chief denied the trade request that would have resulted in a third 72 consecutive hours of duty (work) and a fourteenth duty day in the month of February. With the trades requested by the Grievant, the Grievant would have worked almost twice the normal duty days in one month; which was a short month.

The trade request denied by the Fire Chief was not denied because it resulted in 72 consecutive work hours. Rather, the Fire Chief denied the request because the Fire Chief determined that the accumulative hours in February 2005 would hamper the effectiveness of the Department. In making this determination, the Fire Chief considered all of the cumulative actual and potential debilitating factors that would result from working such hours; including fatigue, safety concerns, alertness and compromised effectiveness.

Article VI(C)(2)(d) vests in the Fire Chief the right to disapprove the Grievant's request; as does Article XXIII. The Fire Chief has not acted arbitrarily, capriciously or in bad faith. The Fire Chief has presented valid concerns based upon his experience as a firefighter

and management professional in charge of the Department. The evidence of his trade approvals establishes that he had acted in a professional, reasoned, and judicious manner.

The Grievant and Union Representative Morovits may have believed that the new VI(C)(2)(g) would be without limitation, but that was not what was negotiated. The new language of Article VI (C)(2)(g) does not stand alone. It is but one of several conditions that must be present before a trade may be approved. No proposals were made to change the Fire Chief's discretion under 2.d. and authority under Article XXIII and these were not changed.

Trades have always needed to be requested and approved in advance and were subject to the Fire Chief's discretion. These practices, as well as negotiations history, clearly evince both parties' understanding that 2.g was subject to 2.d.

Neither the trade review process nor the exercise of discretion by the Fire Chief or Shift Commander was ever abandoned. The approval of virtually all prior requests would not establish a past practice in which trade request cannot be denied, nor would it otherwise estop the exercise of management discretion.

There is no merit to the Union's assertion that the City has not bargained in good faith. Parties to negotiations are under no obligation to point out the obvious. Consistent with the clear contract language, the City always intended that the new 2.g would be subject to the limitations of (C)(2).

The Union had the responsibility to anticipate and understand the effect of their own proposed 2.g. If the Union sincerely believed that 2.g. was completely without limitation and outside the scope of Article VI(C)(2), then why was it included as a subparagraph?

The Union erroneously contends that the trade must be approved if the Union believes that fatigue will not occur; if the requestor has not displayed fatigue in the past; or if there is not a past medical experience. No such requirements are contained in the Agreement. The Union seeks to insert itself into a purely management function.

The goal of an arbitrator is to give effect to all provisions. The Union seeks to have the Arbitrator delete or render inoperative clear and unambiguous contract language. The grievance is without merit and should be denied.

DISCUSSION

This grievance was precipitated by the Fire Chief's decision to deny the Grievant's request for a work day substitution, hereafter referred to as a "trade." Specifically, the Fire Chief denied the Grievant's request for a 72 hour trade for February 15-17, 2005. The Fire Chief denied this request because, in the exercise of his professional opinion, the Fire Chief concluded that, to grant the Grievant's request, would result in the Grievant working an excessive workload within the month of February and that this excessive workload would cause long term fatigue that will hamper the effectiveness of the Department.

As the City argues, Article XXIII, Municipal Authority, provides the City and the Fire Chief with certain management rights. However, as recognized in Article I, Purpose of Agreement, all provisions of the collective bargaining agreement are binding upon the parties, except as invalidated by law. Accordingly, Article XXIII management rights are subject to limitation by other provisions of the parties' collective bargaining agreement.

The parties have negotiated language that specifically addresses Firefighter trade requests. This language is found in Article VI(C)(1). The specific language of Article VI(C)(1)takes precedence over the general language contained in Article XXIII.

As the City argues, the Union has not negotiated an absolute right to have 72 hour trades approved. Under the plain language of Article VI(C)(1)(d), trade requests are subject to approval by either the Fire Chief or the Shift Commander. This language does not state that this approval is at the sole discretion of the Fire Chief or the Shift Commander. Rather, Paragraph (1)(d) states that such approvals are based upon "the staffing needs of the department" and that "The Fire Chief or the Shift Commander shall have the right to disapprove trades if the effectiveness of the Department will be hampered. . ."

The parties have used the words "will be hampered" and have not used the words "may be hampered." Under this language, the Fire Chief's right to disapprove trades does not rest upon a possibility, but rather, rests upon a fact that is required to be established. To that end, the Fire Chief's professional opinion that the effectiveness of the Department will be hampered by approving the Grievant's trade request must be corroborated by objective evidence

Prior to 2002, the Fire Chief was not actively involved in reviewing Firefighter trade requests. Rather, such trade requests were reviewed by Shift Commanders. According, to the Chief, he was not aware of any instance in which a 72 hour trade caused a fatigue problem.

Since 2002, the Fire Chief recalls that he has approved at least 48 requests for 72 hour trades. The Fire Chief recalls that, when he worked as a Firefighter, he worked 72 hour shifts and his effectiveness was not the same over that 72 hour period. It is not evident, however, that the Janesville Department has experienced a problem with any Firefighter working a 72 hour trade, or any trade, other than that involving the 2002 grievance; in that instance the Firefighter had a medical condition that lead to fatigue.

It is not claimed, and the record does not establish, that the Grievant has such a medical condition. The Grievant, who has been with the Department since 1998, states that, between 6 and 13 times per year, he has worked 72 hour trades and that, two or three times per year, he has worked three or more 72-hour trades in one month. According to the Grievant, he has never been too fatigued to work. No Shift Commander, or any other Department employee, testified to the contrary.

The Fire Chief offered an article containing an excerpt of an interview with a physician in which the physician discusses sleep deprivation and sleep disorders. This article does not

address Firefighter work schedules, or the effects of working extra Firefighter shifts. The physician's article relied upon by the Fire Chief does not provide any reasonable basis to conclude that, if the Grievant would have worked the trade denied by the Fire Chief, that the Grievant would have been sleep deprived, prone to a sleep disorder, or would have suffered any fatigue.

Although Union Representatives recall, that during bargaining, they stated that they did not want any restrictions on 72 hour trades, they agreed to place the new provision (g) into language that contains restrictions on the right to make 72 hour trades. Neither the evidence of past practice, nor the discussions that occurred during the negotiation of the current collective bargaining agreement, demonstrate that the parties mutually intended Article VI(C)(1) to be given any meaning other than that which is reflected in its plain language.

In summary, under the plain language of Article VI(C)(1)(d), the Fire Chief's professional opinion that a trade will hamper the effectiveness of the Department must be corroborated by objective evidence. The record presented at hearing does not contain such corroboration. Accordingly, the undersigned has sustained the grievance. Inasmuch as the time period for the Grievant's trade request has passed and future trade requests cannot be evaluated in this proceeding, there is no effective remedy available to the Grievant or the Union.

Based upon the above, and the record as a whole, I issue the following

AWARD

1. The Employer violated the Collective Bargaining Agreement between the City of Janesville and International Association of Fire Fighters Local 580, 2005-2007, when the Fire Chief denied a work day substitution submitted by Paul Verhalen on January 21, 2005.

2. There is no effective remedy available to the Grievant or the Union.

Dated at Madison, Wisconsin, this 23rd day of January, 2006.

Coleen A. Burns /s/

Coleen A. Burns, Arbitrator

CAB/gjc
6947